PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 63. PUBLIC INFORMATION

SUBCHAPTER D. SPECIAL RIGHT OF ACCESS FOR GOVERNING BOARD MEMBERS

1 TAC §§63.30 - 63.37

The Office of the Attorney General (OAG) proposes amendments to Chapter 63 in Title 1 of the Texas Administrative Code (TAC) relating to the Special Right of Access for Governing Board Members. The OAG proposes new Subchapter D, which consists of §§63.30 - 63.37. Proposed new Subchapter D is necessary to implement House Bill 4310, 89th Legislature, Regular Session, which added Subchapter K to Government Code Chapter 552, relating to a special right of access for members of governing boards and requiring the OAG to adopt rules establishing procedures and deadlines for review of information covered by confidentiality agreements executed under that subchapter.

BACKGROUND INFORMATION AND JUSTIFICATION

The Legislature, in the 89th Legislature, Regular Session (2025), added Subchapter K to Chapter 552 of the Government Code (H.B. 4310) which authorizes a member of a governing board of a governmental body or certain nongovernmental entities to obtain access, under a confidentiality agreement, to information that is confidential or otherwise excepted from required public disclosure under the Texas Public Information Act (the Act).

Government Code §552.405 requires the OAG to adopt rules establishing procedures and deadlines for receiving information and briefs necessary to determine whether information covered by a confidentiality agreement is confidential under law.

Proposed new Subchapter D mirrors existing processes in Chapter 63 for confidentiality determinations when special access applies under the Act to ensure consistency and clarity. Proposed new Subchapter D establishes who may request a determination, the required form and content of a request, procedures for submitting information and briefs, and deadlines for submissions and decisions.

SECTION-BY-SECTION SUMMARY

Proposed new §63.30 states the purpose and authority for the rules and references Government Code §552.405 as the statutory basis for adopting procedures. Proposed new §63.31 provides definitions of key terms used throughout the subchapter. Proposed new §63.32 identifies who may request a determination from the OAG and clarifies who may submit briefs in response. Proposed new §63.33 prescribes the required form and content of a request for determination, including documentation and statements necessary for review. Proposed new §63.34 requires the OAG to provide notice of the request for determination to the governmental body or nongovernmental entity. Proposed new §63.35 provides for what documents the governmental body or nongovernmental entity is required to submit to the OAG for a request for determination. Proposed new §63.35 also provides for when a governmental body or nongovernmental entity shall notify an interested party, and how written comments may be submitted to the OAG. Proposed new §63.36 provides the OAG may determine if a governmental body's or nongovernmental entity's submission is sufficient to render a decision, and that the OAG shall notify the governmental body or nongovernmental entity that additional information is necessary to render a decision. Proposed new §63.37 states the OAG shall render a determination not later than the 45th business day after the date the OAG receives a request for determination and shall issue and provide a copy of the written determination to the member requestor, the governmental body or nongovernmental body, and any interested person.

FISCAL NOTE

The OAG has determined that for each year of the first five years the proposed rules are in effect, there are no anticipated fiscal implications for state or local governments as a result of enforcing or administering the rules.

PUBLIC BENEFIT

For each year of the first five years the proposed rules are in effect, the public benefit anticipated includes increased clarity and consistency regarding confidentiality determinations under Subchapter K of Chapter 552 of the Government Code. The OAG does not anticipate costs to individuals or entities required to comply, other than minimal administrative costs associated with preparing and submitting requests and briefs.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL ECONOMY

The OAG has determined that the proposed rules do not have an impact on local employment or economies because the proposed rules only impact governmental bodies and nongovernmental entities. Therefore, no local employment or economy impact statement is required under Texas Government Code §2001.022.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

The OAG has determined that for each year of the first five-year period the proposed rules are in effect, there will be no foreseeable adverse fiscal impact on small business, micro-businesses, or rural communities as a result of the proposed rules.

Since the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

TAKINGS IMPACT ASSESSMENT

The OAG has determined that no private real property interests are affected by the proposed rules, and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to the owner's private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code §2001.0221, the OAG has prepared a government growth impact statement for the proposed rules. For each year of the first five years that the proposed new rules will be in effect, the OAG has determined the following:

(1) the proposed rules will not create or eliminate a government program;

(2) implementation of the proposed rules will not require the creation of new employee positions or the elimination of existing employee positions;

(3) implementation of the proposed rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the proposed rules will not require an increase or decrease in fees paid to the agency;

(5) the proposed rules are new rules and therefore create new regulations;

(6) the proposed rules will not expand, limit, or repeal an existing regulation;

(7) the proposed rules will not increase or decrease the number of individuals subject to the rules' applicability; and

(8) the proposed rules will not positively or adversely affect the state's economy.

REQUEST FOR PUBLIC COMMENTS

Written comments or questions on the proposed rules may be submitted electronically to the OAG's Open Records Division by email to openrecordsassistance@oag.texas.gov, or by mail to Open Records Division, Attn: Rule Comments, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548. Comments will be accepted for thirty (30) days from the date of publication of the proposed rules in the *Texas Register*. Comments should be organized in a manner consistent with the organization of the proposed new rules.

To request a public hearing on the proposal, submit a request before the end of the comment period by email to openrecordsassistance@oag.texas.gov, or by mail to Open Records Division, Attn: Rule Comments, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548.

STATUTORY AUTHORITY

The proposed new Subchapter D in Chapter 63 of 1 TAC are authorized by Texas Government Code §552.405, as added by H.B. 4310 by the 89th Texas Legislature, Regular Session (2025), which requires the OAG to adopt rules, establish procedures, and deadlines for receiving information and briefs necessary to determine whether information covered by a confidentiality agreement is confidential under law.

CROSS-REFERENCE TO STATUTE.

The proposed new sections implement Government Code §§552.401-552.405.

§63.30. Purpose and Authority.

(a) This subchapter governs the procedures by which the attorney general shall render a determination sought by a member of a governing board under Texas Government Code §552.405.

(b) This subchapter is adopted under Government Code §552.405, which requires the attorney general by rule to establish procedures and deadlines for receiving information and written comments necessary to determine whether information covered by a confidentiality agreement is confidential under law.

(c) This subchapter is intended to operate consistently with Government Code Chapter 552 and with existing rules governing the submission and review of information claimed to be confidential or excepted from disclosure.

§63.31. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Act--The Texas Public Information Act, Government Code Chapter 552.

(2) Confidentiality agreement--An agreement executed under Government Code §552.404 between a member of a governing board and a governmental body or nongovernmental entity that governs the member's access to information that is confidential under law.

(3) Governing board--The governing body of a governmental body or the governing board of a nongovernmental entity as described by Government Code §552.401.

(4) Governmental body--Has the meaning assigned by Government Code §552.003(1).

(5) Member--A current member of a governing board acting in the member's official capacity who requests or receives access to public information under Government Code §552.401.

(6) Nongovernmental entity--An entity described by Government Code §552.401 that is not a governmental body but that maintains public information subject to the Act.

(7) Request for determination--A written request made to the attorney general under Government Code §552.405(a) seeking a decision whether information covered by a confidentiality agreement is confidential under law.

§63.32. Who May Request a Determination.

(a) A member that is a party to a confidentiality agreement may request a determination from the attorney general under Government Code §552.405(a) and this subchapter regarding whether information covered by the confidentiality agreement is confidential under law.

(b) A person who asserts an interest in maintaining the confidentiality of the information may submit briefing and relevant materials in response to a request for determination but may not initiate the request unless authorized by statute.

§63.33. Form and Content of a Request for Determination.

(a) A request for determination must:

(1) be in writing and signed by the member requestor;

(2) state the name of the governmental body or nongovernmental entity to whom the original request for information was made;

(3) state the date the original request was made; and

(4) state that the request is made under Government Code §552.405.

(b) The member requestor must submit a copy of the original request with the request for determination. If the member requestor is unable to do so, the member requestor must include a written description of the original request in the request for determination.

(c) The member requestor may submit written comments to the attorney general stating reasons why the requested information should not be considered confidential by law. The written comments must be labeled to indicate whether any portion of the comments discloses or contains the substance of the specific information deemed confidential by the governmental body or nongovernmental entity. A member requestor who submits written comments to the attorney general shall send a copy of those comments to the governmental body or nongovernmental entity.

(d) A member requestor must submit the request for determination and the information required by this subsection not later than the 20th business day after the date the member received the confidentiality agreement.

§63.34. Notice.

(a) The attorney general shall notify the governmental body or nongovernmental entity in writing of a request for determination and provide the governmental body or nongovernmental entity a copy of the request for a determination within a reasonable time but not later than the 5th business day after the date of receiving the request for determination.

(b) The attorney general shall provide the member requestor a copy of the written notice to the governmental body or nongovernmental entity, excluding a copy of the request for determination, within a reasonable time but not later than the 5th business day after the date of receiving the request for determination.

§63.35. Submission of Documents and Comments.

(a) Within a reasonable time but not later than the 10th business day after the date receiving the attorney general's written notice of the request for decision, a governmental body or nongovernmental entity shall:

(1) submit to the attorney general:

(A) written comments stating the law that deems the requested information confidential and the reasons why the stated law applies to the information;

(B) a copy of the written request for information; and

(C) a copy of the specific information deemed confidential by the governmental body or nongovernmental entity, or representative samples of the information if a voluminous amount of information was requested; and

(2) label the copy of the specific information, or the representative samples, to indicate which laws apply to which parts of the copy; and

(3) label the written comments to indicate whether any portion of the comments discloses or contains the substance of the specific information deemed confidential by the governmental body or nongovernmental entity.

(b) A governmental body or nongovernmental entity that submits written comments to the attorney general shall send a copy of those comments to the member requestor within a reasonable time but not later than the 10th business day after the date of receiving the attorney general's written notice of the request for determination. If the written comments disclose or contain the substance of the information requested, the copy of the comments provided to the person must be a redacted copy.

(c) If a governmental body or nongovernmental entity determines a person may have a property interest in the requested information, the governmental body or nongovernmental entity shall notify that person in accordance with Texas Government Code §552.305(d). The governmental body or nongovernmental entity shall notify the affected person not later than the 10th business day after receiving written notice of the request for determination.

(d) If a person notified in accordance with Texas Government Code 552.305 decides to submit written comments to the attorney general, the person must do so not later than the 10th business day after receiving the notice. The written comments must be labeled to indicate whether any portion of the comments discloses or contains the substance of the specific information deemed confidential by the governmental body or nongovernmental entity.

(e) Any interested person may submit written comments to the attorney general stating why the requested information is or is not confidential. The written comments must be labeled to indicate whether any portion of the comments discloses or contains the substance of the specific information deemed confidential by the governmental body or nongovernmental entity.

(f) A person who submits written comments under subsection (d) or (e) of this section shall send a copy of those comments to both the member requestor and the governmental body or nongovernmental entity.

§63.36. Additional Information.

(a) The attorney general may determine whether a governmental body's or nongovernmental entity's submission of information under §63.35 of this subchapter (relating to Submission of Documents and Comments) is sufficient to render a decision.

(b) If the attorney general determines that information in addition to that required by §63.35 of this subchapter is necessary to render a decision, the attorney general shall give written notice of that fact to the governmental body or nongovernmental entity and the member requestor.

(c) A governmental body or nongovernmental entity notified under subsection (b) of this section shall submit the necessary additional information to the attorney general not later than the 7th calendar day after the date the notice is received.

§63.37. Rendition of Attorney General Determination; Issuance of Written Determination.

(a) The attorney general shall promptly render a determination requested under this subchapter, not later than the 45th business day after the date the attorney general receives a request for determination that complies with this subchapter.

(b) The attorney general shall issue a written determination and shall provide a copy of the determination to the member requestor, the governmental body or nongovernmental body, and any interested person who submitted necessary information or written comments to the attorney general about the matter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Justin Gordon
General Counsel
Office of the Attorney General
Earliest possible date of adoption: September 6, 2026
For further information, please call: (512) 423-6984

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER J. PURCHASED HEALTH SERVICES

DIVISION 4. MEDICAID HOSPITAL SERVICES

1 TAC §355.8070

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §355.8070, concerning Hospital Augmented Reimbursement Program (HARP).

BACKGROUND AND PURPOSE

The purpose of the proposal is to establish a calculation to allow for any unused HARP payment room to be distributed to other eligible hospitals within the same class based on an allocation proportionate to the remaining Medicaid charges in excess of all Medicaid payments, including supplemental payments and the portion of HARP payments for the inpatient fee-for-service (FFS) Medicare payment gap.

An amendment to §355.8070 was adopted and effective on April 2, 2025. That amendment added the Centers for Medicare & Medicaid Services (CMS) definition of a nominal charge provider and clarified that the payment methodology for HARP payments would limit inpatient Medicaid payments so they would not exceed inpatient Medicaid charges for all providers, except those that meet the Medicare definition of a nominal charge provider. This proposal will establish a mechanism to distribute any unused payment room after the limitation is applied to other eligible hospitals within the same class.

Additional edits are made to the rule to correct grammar and punctuation, spell out acronyms for clarity, and reorganize parts where necessary.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §355.8070(a) spells out acronyms and adds punctuation for clarity.

The proposed amendment to §355.8070(b) aligns the rule language with standard HHSC drafting conventions and includes a grammatical correction.

The proposed amendment to §355.8070(d) adds subparagraph (B) to paragraph (3) to explain the allocation of unused payment room as it applies to non-state government-owned and operated hospitals for program periods beginning on or after October 1, 2026. Edits are also made to add punctuation, correct grammar for clarity, and reorganize paragraph (3) to account for the addition of a subparagraph.

The proposed amendment to §355.8070(e) adds subparagraph (B) to paragraph (3) to explain the allocation of unused payment room as it applies to private hospitals for program periods beginning on or after October 1, 2026. Edits are also made to add an acronym, add punctuation, correct grammar for clarity, and reorganize paragraph (3) to account for the addition of a subparagraph.

The proposed amendment to §355.8070(f), (g), and (h) corrects grammar and punctuation for clarity.

FISCAL NOTE

Victoria Grady, Deputy Chief, Finance, has determined that for each year of the first five years that the rule will be in effect, enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of state or local governments.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create a new regulation;

(6) the proposed rule will not expand, limit, or repeal existing regulations;

(7) the proposed rule will not change the number of individuals subject to the rule; and

(8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Victoria Grady has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities. The rule does not impose any additional costs on small businesses, micro-businesses, or rural communities that are required to comply with the rule.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Megan Wolfe, Director of Provider Finance, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule as it will allow for any unused HARP payment room to be distributed to other hospitals within the same class. This allows for additional HARP payments to eligible hospitals.

Victoria Grady has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rule because the rule does not impose any additional fees or costs on those who are required to comply.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC HEARING

A public hearing to receive comments on the proposal will be held by HHSC through a webinar. The meeting date and time will be posted on the HHSC Communications and Events Website at https://hhs.texas.gov/about-hhs/communications-events and the HHSC Provider Finance communications website at https://pfd.hhs.texas.gov/provider-finance-communications.

Please contact the Provider Finance Department, Hospital Finance section at pfd_hospitals@hhsc.state.tx.us if you have questions.

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to HHSRulesCoordinationOffice@hhs.texas.gov.

To be considered, comments must be submitted no later than 14 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 26R088" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services system; Texas Government Code §524.0005, which provides the executive commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §532.0051, which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §532.0057(a), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for Medicaid payments under Texas Human Resources Code Chapter 32.

The amendment affects Texas Government Code Chapter 532 and Texas Human Resources Code Chapter 32.

§355.8070. Hospital Augmented Reimbursement Program.

(a) Introduction. This section establishes the Hospital Augmented Reimbursement Program (HARP) [~~Program~~], wherein the Texas Health and Human Services Commission (HHSC) directs payments to certain providers that serve Texas Medicaid fee-for-service patients, including eligible non-state government-owned [~~government owned~~] hospitals, private hospitals, state government-owned [~~state-owned~~] hospitals, state government-owned Institutions for Mental Diseases (IMDs), and private IMDs. This section also describes the methodology used by HHSC to calculate and administer such payments. A provider is eligible for a payment under this section only if HHSC has submitted and Centers for Medicare & Medicaid Services (CMS) [~~CMS~~] has approved a state plan amendment permitting HHSC to make payments under this section to the hospital class to which the provider belongs.

(b) Definitions. The following terms in this section have the following meanings, unless the context clearly indicates otherwise. [~~definitions apply when the terms are used in this section.~~]

(1) Fee-for-Service (FFS)--A system of the health insurance payment in which a health care provider is paid a fee by HHSC through the contracted Medicaid claims administrator directly, for each service rendered. For Texas Medicaid purposes, fee-for-service excludes any service rendered under a managed care program through a managed care organization.

(2) Inpatient hospital services--Services ordinarily furnished in a hospital for the care and treatment of inpatients under the direction of a physician or dentist, or a subset of these services identified by HHSC. Inpatient hospital services do not include services furnished in a skilled nursing facility, intermediate care facility services furnished by a hospital with swing-bed approval, or any other services that HHSC determines should not be subject to payment.

(3) Intergovernmental transfer (IGT)--A transfer of public funds from another state agency or a non-state governmental entity to HHSC.

(4) Medicare payment gap--The difference between what Medicare is estimated to pay for the services and what Medicaid actually paid for the same services from the most recent FFS upper payment limit (UPL) demonstration.

(5) Nominal charge provider--A provider that charges an amount equal to 60 percent or less of the reasonable cost of service or services. Nominal charges mean Medicare charges are at or below a ratio equal to 0.6 of reasonable costs which equates to a Medicare ratio of cost to charge (RCC) that exceeds 1.67. Charges and costs are based on inpatient hospital services only.

(6) Non-state government-owned and operated hospital--A hospital that is owned and operated by a local government entity, including [~~but not limited to~~] a city, county, or hospital district.

(7) Outpatient hospital services--Preventive, diagnostic, therapeutic, rehabilitative, or palliative services that are furnished to outpatients of a hospital under the direction of a physician or dentist, or a subset of these services identified by HHSC.

(8) Private hospital--Any hospital that is not government-owned and operated.

(9) Private Institution for Mental Diseases (IMD)--A hospital that is primarily engaged in providing psychiatric diagnosis, treatment or care of individuals with mental illness and that is not government-owned and operated.

(10) Program period--Each program period is equal to a federal fiscal year beginning October 1 and ending September 30 of the following year.

(11) Prospective Payment System--A method of reimbursement in which payment is made based on a predetermined, fixed amount.

(12) Sponsoring governmental entity--A state or non-state governmental entity that agrees to transfer to HHSC some or all of the non-federal share of program expenditures under this subchapter.

(13) State government-owned hospital--Any hospital owned by the state of Texas that is not considered an IMD.

(14) State government-owned IMD--A hospital that is primarily engaged in providing psychiatric diagnosis, treatment or care of individuals with mental illness and that is owned by the state of Texas that is considered an IMD.

(c) Participation requirements. As a condition of participation, all hospitals participating in the program must allow for the following.

(1) The hospital must submit a properly completed enrollment application by the due date determined by HHSC. The enrollment period must be no less than 15 business days, and the final date of the enrollment period will be at least nine days prior to the intergovernmental transfer (IGT) notification.

(2) If a provider has changed ownership in the past five years in a way that impacts eligibility for this program, the provider must submit to HHSC, upon demand, copies of contracts it has with third parties with respect to the transfer of ownership or the management of the provider and which reference the administration of, or payment from, this program.

(d) Payments for non-state government-owned and operated hospitals.

(1) Eligible hospitals. Payments under this subsection will be limited to hospitals defined as "non-state government-owned [~~government owned~~] and operated hospital" that are enrolled in Medicare and participate in Texas Medicaid fee-for-service.

(2) Non-federal share of program payments. The non-federal share of the payments is funded through IGTs from sponsoring governmental entities. No state general revenue is available to support the program.

(A) HHSC will communicate suggested IGT responsibilities. Suggested IGT responsibilities will be based on the maximum dollars to be available under the program for the program period, as determined by HHSC. HHSC will also communicate estimated revenues each enrolled hospital could earn under the program for the program period, with those estimates based on HHSC's suggested IGT responsibilities.

(B) HHSC will issue an IGT notification to specify the date that IGT is requested to be transferred, not fewer than 14 business days before IGT transfers are due. HHSC may post the IGT deadlines and other associated information on HHSC's website, send the information through the established Medicaid notification procedures used by HHSC's fiscal intermediary, send through other direct mailing, send through GovDelivery, or provide the information to the hospital associations to disseminate to the hospital associations' [~~their~~] member hospitals.

(3) Payment Methodology.

(A) To determine each participating non-state government-owned and operated hospital's payment under this section, HHSC will sum the hospital's inpatient FFS Medicare payment gap and the hospital's outpatient FFS Medicare payment gap. HARP payments will be limited such that total inpatient Medicaid payments, including supplemental payments and the portion of HARP payments for the inpatient FFS Medicare payment gap, do not exceed Medicaid charges. Nominal charge providers as defined in subsection (b) of this section are exempt from this limitation.

(B) For program periods beginning on or after October 1, 2026, HHSC will also allocate to participating hospitals in the class any total inpatient FFS Medicare payment gap that remains after payment allocations under subparagraph (A) of this paragraph are made. The allocation will be proportional to the calculated amount of inpatient FFS excess Medicaid charges. HHSC will limit payments under this subparagraph such that the total inpatient Medicaid payments for each participating hospital do not exceed Medicaid charges. Medicaid payments include supplemental payments and payments made under this paragraph. Nominal charge providers as defined in subsection (b) of this section are exempt from this limitation.

(e) Payments for private hospitals.

(1) Eligible hospitals. Payments under this subsection will be limited to hospitals defined as "private hospital" in subsection (b) of this section that are enrolled in Medicare and participate in Texas Medicaid fee-for-service.

(2) Non-federal share of program payments. The non-federal share of the payments is funded through IGTs from sponsoring governmental entities. No state general revenue is available to support the program.

(A) HHSC must receive the non-federal portion of reimbursement for HARP through a method approved by HHSC and CMS [~~Centers for Medicare & Medicaid Services (CMS)~~] for reimbursement through this program.

(B) A hospital under this subsection must designate a single local governmental entity to provide the non-federal share of the payment through a method determined by HHSC. If the single local governmental entity transfers less than the full non-federal share of a hospital's payment amount calculated in any paragraph under this subchapter, HHSC will recalculate that specific hospital's payment based on the amount of the non-federal share actually transferred.

(C) HHSC will communicate suggested IGT responsibilities. Suggested IGT responsibilities will be based on the maximum dollars to be available under the program for the program period, as determined by HHSC. HHSC will also communicate estimated revenues each enrolled hospital could earn under the program for the program period, with those estimates based on HHSC's suggested IGT responsibilities.

(D) HHSC will issue an IGT notification to specify the date that IGT is requested to be transferred, not fewer than 14 business days before IGT transfers are due. HHSC may post the IGT deadlines and other associated information on HHSC's website, send the information through the established Medicaid notification procedures used by HHSC's fiscal intermediary, send through other direct mailing, send through GovDelivery, or provide the information to the hospital associations to disseminate to the hospital associations' [~~their~~] member hospitals.

(3) Payment Methodology.

(A) To determine each participating private hospital's payment under this section, HHSC will sum the hospital's inpatient FFS Medicare payment gap and the hospital's outpatient FFS Medicare payment gap. HARP payments will be limited such that total inpatient

Medicaid payments, including supplemental payments and the portion of HARP payments for the inpatient FFS Medicare payment gap, do not exceed Medicaid charges. Nominal charge providers as defined in subsection (b) of this section are exempt from this limitation.

(B) For program periods beginning on or after October 1, 2026, HHSC will also allocate to participating hospitals in the class any total inpatient FFS Medicare payment gap that remains after payment allocations under subparagraph (A) of this paragraph are made. The allocation will be proportional to the calculated amount of inpatient FFS excess Medicaid charges. HHSC will limit payments under this subparagraph such that the total inpatient Medicaid payments for each participating hospital do not exceed Medicaid charges. Medicaid payments include supplemental payments and payments made under this paragraph. Nominal charge providers as defined in subsection (b) of this section are exempt from this limitation.

(f) Payments for state government-owned hospitals.

(1) Eligible hospitals. Payments under this subsection will be limited to hospitals defined as "state government-owned hospital" in subsection (b) of this section that are enrolled in Medicare and participate in Texas Medicaid fee-for-service.

(2) Non-federal share of program payments. The non-federal share of the payments is funded through IGTs from sponsoring governmental entities. No state general revenue is available to support the program.

(A) HHSC must receive the non-federal portion of reimbursement for HARP through a method approved by HHSC and CMS for reimbursement through this program.

(B) A hospital under this subsection must designate a single local governmental entity to provide the non-federal share of the payment through a method determined by HHSC. If the single local governmental entity transfers less than the full non-federal share of a hospital's payment amount calculated in any paragraph under this subchapter, HHSC will recalculate that specific hospital's payment based on the amount of the non-federal share actually transferred.

(C) HHSC will communicate suggested IGT responsibilities. Suggested IGT responsibilities will be based on the maximum dollars to be available under the program for the program period, as determined by HHSC. HHSC will also communicate estimated revenues each enrolled hospital could earn under the program for the program period, with those estimates based on HHSC's suggested IGT responsibilities.

(D) HHSC will issue an IGT notification to specify the date that IGT is requested to be transferred, not fewer than 14 business days before IGT transfers are due. HHSC will publish the IGT deadlines and all associated dates on the HHSC [~~its Internet~~] website.

(3) Payment Methodology.

(A) To determine payment under this section for each participating state government-owned [~~state-owned~~] hospital reimbursed through Prospective Payment System (PPS), HHSC will sum the hospital's inpatient FFS Medicare payment gap and the hospital's outpatient FFS Medicare payment gap. HARP payments will be limited such that total inpatient Medicaid payments, including supplemental payments and the portion of HARP payments for the inpatient FFS Medicare payment gap, do not exceed Medicaid charges. Nominal charge providers as defined in subsection (b) of this section are exempt from this limitation.

(B) To determine payment under this section for each participating state government-owned [~~state-owned~~] hospital not reimbursed through Prospective Payment System (PPS), HHSC will use the hospital's FFS outpatient Medicare payment gap.

(g) Payments for state government-owned IMDs.

(1) Eligible hospitals.

(A) Payments under this subsection will be limited to hospitals defined as "state government-owned IMD" in subsection (b) of this section that are enrolled in Medicare and participate in Texas Medicaid fee-for-service.

(B) The hospital must have submitted at least one adjudicated FFS Medicaid claim for each reporting period to be eligible for payment.

(2) Non-federal share of program payments. The non-federal share of the payments is funded through IGTs from sponsoring governmental entities. No state general revenue is available to support the program.

(A) HHSC must receive the non-federal portion of reimbursement for HARP through a method approved by HHSC and CMS for reimbursement through this program.

(B) A hospital under this subsection must designate a single local governmental entity to provide the non-federal share of the payment through a method determined by HHSC. If the single local governmental entity transfers less than the full non-federal share of a hospital's payment amount calculated in any paragraph under this subchapter, HHSC will recalculate that specific hospital's payment based on the amount of the non-federal share actually transferred.

(C) HHSC will communicate suggested IGT responsibilities. Suggested IGT responsibilities will be based on the maximum dollars to be available under the program for the program period, as determined by HHSC. HHSC will also communicate estimated revenues each enrolled hospital could earn under the program for the program period, with those estimates based on HHSC's suggested IGT responsibilities.

(D) HHSC will issue an IGT notification to specify the date that IGT is requested to be transferred, not fewer than 14 business days before IGT transfers are due. HHSC may post the IGT deadlines and other associated information on HHSC's website, send the information through the established Medicaid notification procedures used by HHSC's fiscal intermediary, send through other direct mailing, send through GovDelivery, or provide the information to the hospital associations to disseminate to their member hospitals.

(3) Payment Methodology. To determine each participating state government-owned IMD hospital's payment under this section, HHSC will use the hospital's inpatient FFS Medicare payment gap. HARP payments will be limited such that total inpatient Medicaid payments, including supplemental payments and the portion of HARP payments for the inpatient FFS Medicare payment gap, do not exceed Medicaid charges. Nominal charge providers as defined in subsection (b) of this section are exempt from this limitation.

(h) Payments for private IMDs.

(1) Eligible hospitals.

(A) Payments under this subsection will be limited to hospitals defined as "private IMD" in subsection (b) of this section that participate in Texas Medicaid fee-for-service.

(B) The hospital must have submitted at least one adjudicated FFS Medicaid claim for each reporting period to be eligible for payment.

(2) Non-federal share of program payments. The non-federal share of the payments is funded through IGTs from sponsoring governmental entities. No state general revenue is available to support the program.

(A) HHSC must receive the non-federal portion of reimbursement for HARP through a method approved by HHSC and CMS for reimbursement through this program.

(B) A hospital under this subsection must designate a single local governmental entity to provide the non-federal share of the payment through a method determined by HHSC. If the single local governmental entity transfers less than the full non-federal share of a hospital's payment amount calculated in any paragraph under this subchapter, HHSC will recalculate that specific hospital's payment based on the amount of the non-federal share actually transferred.

(C) HHSC will communicate suggested IGT responsibilities. Suggested IGT responsibilities will be based on the maximum dollars to be available under the program for the program period, as determined by HHSC. HHSC will also communicate estimated revenues each enrolled hospital could earn under the program for the program period, with those estimates based on HHSC's suggested IGT responsibilities.

(D) HHSC will issue an IGT notification to specify the date that IGT is requested to be transferred, not fewer than 14 business days before IGT transfers are due. HHSC may post the IGT deadlines and other associated information on HHSC's website, send the information through the established Medicaid notification procedures used by HHSC's fiscal intermediary, send through other direct mailing, send through GovDelivery, or provide the information to the hospital associations to disseminate to the hospital associations' [~~their~~] member hospitals.

(3) Payment Methodology. To determine each participating private IMD hospital's payment under this section, HHSC will use the hospital's inpatient FFS Medicare payment gap. HARP payments will be limited such that total inpatient Medicaid payments, including supplemental payments and the portion of HARP payments for the inpatient FFS Medicare payment gap, do not exceed Medicaid charges. Nominal charge providers as defined in subsection (b) of this section are exempt from this limitation.

(i) Changes in operation. If an enrolled hospital closes voluntarily or ceases to provide hospital services in its facility, the hospital must notify the HHSC Provider Finance Department by hand delivery, United States (U.S.) mail, or special mail delivery within 10 business days of closing or ceasing to provide hospital services. Notification is considered to have occurred when the HHSC Provider Finance Department receives the notice.

(j) Reconciliation. HHSC will reconcile the amount of the non-federal funds actually expended under this section during the program period with the amount of funds transferred to HHSC by the sponsoring governmental entities for that same period. If the amount of non-federal funds actually expended under this section is less than the amount transferred to HHSC, HHSC will refund the balance proportionally to how it was received.

(k) Payments under this section will be made on a semi-annual basis.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 22, 2026.

TRD-202603052
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 6, 2026
For further information, please call: (512) 487-3480

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TITLE 16. ECONOMIC REGULATION

PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 140. ADMINISTRATION OF TEXAS LOTTERY AND CHARITABLE BINGO

The Texas Department of Licensing and Regulation (Department) proposes repeal of an existing rule at 16 Texas Administrative Code (TAC), Chapter 140, Subchapter A, §140.2; amendments to existing rules at Subchapter B, §§140.152, 140.153, 140.157, 140.158 and §140.160; and Subchapter E, §140.355 and §140.368; and a new rule at Subchapter E, §140.369, regarding the Texas Lottery program. These proposed changes are referred to as "proposed rules."

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

The rules under 16 TAC, Chapter 140, implement Texas Government Code, Chapter 466, State Lottery; and Texas Occupations Code, Chapter 51, Texas Department of Licensing and Regulation.

The proposed rules are necessary to implement Senate Bill (SB) 1346 and SB 3070, 89th Legislature, Regular Session (2025), and to make related cleanup changes to conform the rules to the transfer of the state lottery to the Department. SB 1346 prohibits licensed lottery ticket sales agents from knowingly selling or allowing the sale of tickets for a lottery game involving a drawing to anyone attempting to buy all or substantially all possible winning tickets for a drawing. After a hearing, the Texas Commission of Licensing and Regulation (Commission) shall revoke the license of an agent who violates this prohibition for each of the sales agent's licensed locations. A revoked agent cannot reapply for a license before the first anniversary of the license revocation date. The proposed rules implement SB 1346 by adding this prohibited conduct as a basis for license suspension or revocation, updating the Standard Penalty Chart to include the violation, and adding a reapplication restriction for a person whose license has been revoked for this conduct.

SB 3070, which transferred administration of the state lottery to the Department on September 1, 2025, makes it a Class B misdemeanor for a person to sell more than 100 lottery tickets to one individual in a single transaction; authorizes a person to buy a ticket only in person at a licensed sales agency during normal business hours; and requires a licensed sales agent or an agent's employee to use a process prescribed by a rule to verify the age of each ticket purchaser at the point of sale. A person who violated this requirement would commit a Class B misdemeanor. SB 3070 also prohibits a person from using a telephone, Internet application, or mobile Internet application to purchase or order a ticket for a lottery game, or, for compensation, to accept a ticket order for a lottery game from a player, sell a ticket to a player, or arrange to purchase or for another person to purchase a ticket on behalf of a player. An offense under these provisions is a Class A misdemeanor. SB 3070 revises the offense of selling a ticket to a minor to specify that a person commits an offense if the person did so with criminal negligence, rather than knowingly and intentionally. Finally, SB 3070 prohibits the Department from providing a licensed location of a sales agent with more than five lottery vending machines, lottery computer terminals, or items of lottery equipment that print tickets.

The proposed rules implement SB 3070 by conforming Chapter 140 to the transfer of the state lottery to the Department, incorporating the new statutory ticket-sales requirements and prohibitions into the retailer and enforcement rules, updating the Standard Penalty Chart to reflect those changes, and establishing limitations on the placement of certain lottery equipment at licensed sales locations. The proposed rules also make technical and cleanup changes to update cross-references, remove outdated references, and improve consistency within Chapter 140.

Advisory Committee Recommendations

The proposed rules were presented to and discussed by the Lottery Advisory Committee at its meeting on July 15, 2026. The Advisory Committee did not recommend any changes to the proposed rules and voted to recommend that the proposed rules be published in the *Texas Register* for public comment. After the Advisory Committee meeting, the Department made limited changes to the proposed rules in response to further internal review. The changes revise §140.158(b)(5) to replace the reference to discourteous conduct with a more specific reference to abusive conduct; clarify in the Standard Penalty Chart that a violation of Government Code §466.1555 results in revocation at all licensed locations of the licensee; revise §140.369(b) to apply the five-machine limitation to lottery vending machines unless additional machines are approved by the director; and replace "entries" with "tickets" in §140.369(d). The Department also made a nonsubstantive capitalization correction in §140.152(a). These changes address concerns regarding clarity and specificity and more closely conform the proposed rules to the applicable statutory requirements.

SECTION-BY-SECTION SUMMARY

Subchapter A. Lottery Procurement, Lottery Advisory Committee, and Bingo Advisory Committee

The proposed rules amend the heading of Subchapter A to remove the reference to the Bingo Advisory Committee because §140.2, concerning that committee, is being repealed.

The proposed rules repeal §140.2, because the substance of this rule has been consolidated into and is now fully addressed in §141.102, relating to Bingo Advisory Committee. As a result of this consolidation, §140.2 is no longer necessary and its repeal eliminates redundancy and improves clarity within the Department's rules.

Subchapter B. Licensing of Sales Agents

The proposed amendments to §140.152 update references to "commission" to "department," and update a cross-reference to a rule that was transferred from Chapter 401 to Chapter 140 and renumbered effective October 1, 2025. The proposed amendments also delete a reference to the director of the Lottery Operations Division, clarifying that the term "director" in the rule will instead refer to the executive director or his/her designee. After the Advisory Committee recommended publication of the proposed rules, the Department made a nonsubstantive capitalization correction in §140.152(a). This correction does not substantively differ from the rule recommended by the Advisory Committee.

The proposed amendments to §140.153 update references to "commission" to "department" throughout the rule. The proposed amendments add new subsection (g), which states that a person whose license is revoked under Tex. Gov't Code §466.1555(b) and §140.158 may not reapply for a license until one year after the revocation date. The proposed amendments also update cross-references to rules that were transferred from Chapter 401 to Chapter 140 and renumbered effective October 1, 2025.

The proposed amendments to §140.157 update references to "commission" with "department," and update cross-references to rules that were transferred from Chapter 401 to Chapter 140 and renumbered effective October 1, 2025. The proposed amendments also correct a typo.

The proposed amendments to §140.158 update references to "commission" to "department" throughout the rule, and update cross-references to rules that were transferred from Chapter 401 to Chapter 140 and renumbered effective October 1, 2025. The proposed amendments to §140.158(b) add new paragraph (39), which provides a basis for license suspension or revocation if a licensee sells to one individual more than 100 lottery tickets in a single transaction, whether draw game tickets, scratch tickets, or any combination; renumber existing paragraphs (39), (40), (41), and (42) as new paragraphs (40), (41), (42), and (43); and revise renumbered paragraph (40), relating to selling a ticket to a minor, to reflect that a person commits an offense if the person did so with criminal negligence, rather than knowingly and intentionally. The proposed amendments to §140.158(b) also add new paragraph (44), which provides a basis for license revocation if a licensee knowingly sells or allows the sale of tickets for a lottery game involving a drawing to one or more persons attempting to purchase all or substantially all possible winning tickets for the drawing; new paragraph (45), which provides a basis for license revocation if a licensee fails to verify the age of each ticket purchaser at the point of sale; new paragraph (46), which provides a basis for license revocation if a licensee, by telephone, Internet application, or mobile Internet application, facilitates the purchase or orders the purchase of a ticket for a lottery game; new paragraph (47), which provides a basis for license revocation if a licensee, by telephone, Internet application, or mobile Internet application, for compensation, accepts an order for a ticket for a lottery game from a player, sells a ticket for a lottery game to a player, or arranges to purchase a ticket on behalf of a person playing a lottery game, or for another person to purchase a ticket on behalf of a person playing a lottery game; and new paragraph (48), which provides a basis for license revocation if a licensee sells tickets to a person who is not physically present at the retailer's location, a person outside the retailer's licensed location, or to a person outside the normal business hours of the retailer's licensed location. The proposed amendments also renumber existing paragraph (43) as paragraph (49) and add new subsection (d), which defines "ticket" for purposes of the chapter as a single scratch ticket or a single draw game ticket that may include multiple plays per ticket. After the Advisory Committee recommended publication of the proposed rules, the Department revised §140.158(b)(5) to replace "discourteous treatment" with "abusive treatment." This change differs from the language recommended by the Advisory Committee and was made to remove a potentially subjective standard.

The proposed amendments to §140.160 update references to "commission" with "department," and update cross-references to rules that were transferred from Chapter 401 to Chapter 140 and renumbered effective October 1, 2025. The proposed amendments also clarify that the executive director or commission may assess penalties for violations and may deviate from the Standard Penalty Chart unless otherwise required by statute. The proposed amendments to §140.160(h) update the figure 16 TAC §140.160(h), Standard Penalty Chart, to reflect the addition of new violation 39, the amendment and renumbering of violation 40, the renumbering of violations 41, 42, and 43, and the addition of new violations Nos. 44, 45, 46, 47, and 48, corresponding to the proposed amendments to §140.158(b)(39)-(48), as outlined above. After the Advisory Committee recommended publication of the proposed rules, the Department revised the Standard Penalty Chart to clarify that the penalty for violation 44 is revocation of all licensed locations of the licensee, consistent with Government Code §466.1555(b). This clarification differs from the language recommended by the Advisory Committee but does not change the statutorily required penalty.

Subchapter E. Retailer Rules

The proposed amendments to §140.355 update references to "commission" to "department". The proposed amendments add new subsection (d), which requires each retailer to electronically access the electronically readable information on a ticket purchaser's driver's license, commercial driver's license, or personal identification certificate to verify the age of each ticket purchaser at the point of sale, and allows the retailer to visually inspect the identification if the retailer cannot access the electronically readable information; add new subsection (g), which prohibits retailers from selling to one individual more than 100 lottery tickets in a single transaction; and add new subsection (h), which prohibits retailers from selling tickets to persons who are not physically present at the retailer's location, who are outside the retailer's licensed location, or outside the normal business hours of the retailer's licensed location.

The proposed amendments to §140.368 update references to "commission" to "department" throughout the rule.

The proposed rules add §140.369, which establishes limitations on certain lottery equipment supplied to licensed sales locations. Subsection (a) provides that a licensed location may not be supplied with more than five traditional lottery terminals unless additional terminals are approved by the director and requires that the number of terminals not be disproportionate to the amount of legitimate retail business conducted at the location. Subsection (b) establishes the same limitations for lottery vending machines, consistent with Government Code §466.259. Subsection (c) temporarily exempts Texas Lottery promotional events from the five-terminal limit and allows additional equipment approved by the director to support those activities. Subsection (d) defines "traditional lottery terminal" for purposes of the section. After the Advisory Committee recommended publication of the proposed rules, the Department revised subsection (b) to apply the five-machine limitation to lottery vending machines unless additional machines are approved by the director. This differs from the version recommended by the Advisory Committee, which exempted lottery vending machines from the limitation. The Department also replaced "entries" with "tickets" in subsection (d) for clarity.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

Tony Couvillon, Senior Policy Research and Budget Analyst, has determined that for each year of the first five years the proposed rules are in effect, there are no estimated additional costs or reductions in costs to state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, there is no estimated increase or loss in revenue to the state or local government as a result of enforcing or administering the proposed rules.

Mr. Couvillon has determined that for each year of the first five years the proposed rules are in effect, enforcing or administering the proposed rules does not have foreseeable implications relating to costs or revenues of state governments or local governments.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Mr. Couvillon has determined that the proposed rules will not affect a local economy, the agency is not required to prepare a local employment impact statement under Texas Government Code §2001.022.

PUBLIC BENEFITS

Mr. Couvillon also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be ensuring that the lottery is administered fairly and that the public can have confidence in the integrity of lottery games. The proposed rules will also help ensure that only adults can purchase lottery tickets, and will provide clearer rules for licensed sales agents and retailers regarding restricted sales, age verification, ticket-purchase limits, and limitations on certain lottery equipment.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Couvillon has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rules will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code §2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Texas Government Code §2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code §2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

1. The proposed rules do not create or eliminate a government program.

2. Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

3. Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

4. The proposed rules do not require an increase or decrease in fees paid to the agency.

5. The proposed rules create a new regulation. The proposed rules create a new regulation by prohibiting a person whose license has been revoked for selling or allowing the sale of lottery draw tickets to a person or persons attempting to purchase all or substantially all possible winning tickets for the drawing from applying for a license before the first anniversary of the license revocation date, and by setting limitations on the placement of lottery terminals.

6. The proposed rules expand, limit, or repeal an existing regulation. The proposed rules expand existing regulations by adding new grounds for license suspension or revocation; adding new retailer restrictions for age verification, ticket-purchase limits, and in-person sales during normal business hours; and updating the Standard Penalty Chart to reflect the proposed changes. The proposed rules limit an existing regulation by removing the requirement for a person seeking to inspect a license application to submit a written request to the executive director specifically stating the information sought to be inspected. The proposed rules repeal an existing regulation by repealing §140.2, Bingo Advisory Committee, because the substance of that rule has been consolidated into §141.102.

7. The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.

8. The proposed rules do not positively or adversely affect this state's economy.

TAKINGS IMPACT ASSESSMENT

The Department has determined that no private real property interests are affected by the proposed rules and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Texas Government Code §2007.043.

PUBLIC COMMENTS AND INFORMATION RELATED TO THE COST, BENEFIT, OR EFFECT OF THE PROPOSED RULES

The Department is requesting public comments on the proposed rules and information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis. Any information that is submitted in response to this request must include an explanation of how and why the submitted information is specific to the proposed rules. Please do not submit copyrighted, confidential, or proprietary information.

Comments on the proposed rules and responses to the request for information may be submitted electronically on the Department's website at https://ga.tdlr.texas.gov:1443/form/Ch140_Rule_Making; by facsimile to (512) 344-5189; or by mail to Dorota Bienkowska, Legal Assistant, Texas Department of Licensing and Regulation, P.O. Box 16630, Austin, Texas 78761. The deadline for comments is 30 days after publication in the *Texas Register*.

SUBCHAPTER A. LOTTERY PROCUREMENT, LOTTERY ADVISORY COMMITTEE, AND BINGO ADVISORY COMMITTEE

16 TAC §140.2

The proposed repeal is proposed under Texas Government Code, Chapter 466, and Texas Occupations Code, Chapter 51, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Government Code, Chapter 466, and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are to be adopted are Senate Bill (SB) 1346 and SB 3070, 89th Legislature, Regular Session (2025).

§140.2. Bingo Advisory Committee.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Deanne Rienstra
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 344-5392

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SUBCHAPTER B. LICENSING OF SALES AGENTS

16 TAC §§140.152, 140.153, 140.157, 140.158, 140.160

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Government Code, Chapter 466, and Texas Occupations Code, Chapter 51, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Government Code, Chapter 466, and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are to be adopted are Senate Bill (SB) 1346 and SB 3070, 89th Legislature, Regular Session (2025).

§140.152. Application for License.

(a) An applicant for a license under this subchapter must apply to the Texas Department of Licensing and Regulation (department) [~~Commission~~] using forms provided by the department [~~Commission~~].

(b) The executive director (director) or his/her designee shall develop all forms and related documents including, but not limited to, an application form, release form to obtain a credit report, and/or any other background information relating to the applicant required to determine the applicant's eligibility for a license and whether the granting of a license to the applicant will best serve the public convenience. An applicant must disclose all criminal convictions for those individuals of whom an investigation is authorized under the Government Code, §466.201, and which are requested in the application.

(c) An applicant shall, under penalty of perjury, complete, sign, date, and submit all forms and related information and documents required. By signing and submitting the application form, the applicant agrees to allow the director [~~of the Lottery Operations Division (hereinafter "director")~~] to investigate the credit, criminal, and tax background of the applicant and other matters as authorized under the State Lottery Act (Act), Government Code, Chapter 466.

(d) Every application for a license submitted under this subchapter shall be accompanied by a license application fee in an amount to be established by the director. If the director denies an application for a license based on a factor listed in §140.153(a) [~~§401.153(a) of this title~~] (relating to Qualifications for License), the director shall refund one half of the application fee to the applicant. If the director denies an application based on another factor, the director may not refund any part of the application fee. If an applicant fails to provide all forms and related information and documents required as part of the application, the director may cancel the application without making a determination to deny. If the director cancels an application, the director shall not refund any part of the application fee.

(e) Every license application submitted to the director under this subchapter shall be accompanied by security as authorized by the Government Code, §466.156(a), in a form and amount determined by the director. The director may reduce or waive the amount of security required, if feasible, after consideration of the possible loss to the state from the operation of the applicant in connection with the lottery, whether the applicant is a minority business as defined by Government Code, §466.107, or any other factor the director finds relevant. If the director determines that the purposes of the Act would be best served through establishment and maintenance of a pooled fund for purposes of reimbursing the division for losses arising from the operation of licensed sales agents, the director may require security in the form of a mandatory contribution by each applicant. Any amount so contributed may not be refunded. Depending upon the losses required to be reimbursed by such a fund, the director may require additional contributions to such a fund as a condition of any license application, including a license renewal application.

(f) All applications submitted under this subchapter shall be available for public inspection during business hours, provided that criminal history information and other information confidential by law shall not be available for inspection. Requests for inspection will be handled in compliance with the Texas Public Information Act, Chapter 552, Government Code. [~~Any person seeking to inspect any application shall furnish a written request to the director specifically stating the information sought to be inspected. The director may respond to such requests orally or in writing in order to arrange for the inspection of the requested documents after a reasonable time is allowed for the division to review the documents and delete confidential information.~~]

§140.153. Qualifications for License.

(a) Before issuing a license to any person under this subchapter, the executive director or his/her designee shall consider:

(1) the financial responsibility and security of the applicant and the business or activity in which the applicant is engaged. Consideration of this factor may include the analysis of the applicant's credit record, compliance with tax laws of other jurisdictions, status of permits and licenses, results of criminal background check, adequacy of security procedures against theft, whether the location is fixed and permanent, whether the applicant can provide appropriate security, and any other factor that may assist the director in such evaluation;

(2) the public accessibility of the applicant's place of business or activity. Consideration of this factor may include analysis of the applicant's hours of operation, proximity to major transit routes, proximity to large employers, public parking availability, and any other factor that may assist the director in such evaluation;

(3) the sufficiency of existing sales agents to serve the public convenience. Consideration of this factor may include analysis of number and proximity of other sales agents in a given market area, and/or number of "minority businesses" (as that term is defined in the Government Code, §466.107(b)) licensed in a given market area, with the possibility that additional licenses for any given market area may be denied if the area is determined to be adequately served by existing licensees;

(4) whether individuals under 18 years of age constitute a majority of the applicant's customers or as customers provide a majority of the applicant's sales volume;

(5) the volume of expected lottery sales at the applicant's place of business or activity; and

(6) any other factor that is helpful in determining whether the applicant's experience, character, and general fitness are such that the applicant's participation as a sales agent will not detract from the integrity, security, honesty, or fairness of the operation of the lottery. An example of the type of factor considered in this regard is the analysis of the type of product sold or form of service provided by the applicant.

(b) The director may grant or deny an application for a license under this subchapter based on any one or more factors listed in subsection (a) [~~of this section~~]. In addition, the director shall deny an application for a license under this subchapter upon a finding that the applicant:

(1) has been convicted of a felony, criminal fraud, gambling or a gambling-related offense, or a misdemeanor involving moral turpitude, if less than 10 years has elapsed since the termination of the sentence, parole, mandatory supervision, or probation served for the offense;

(2) is or has been a professional gambler. A "professional gambler" is a person whose profession is, or whose major source of income derives from, playing games of chance for profit;

(3) has been finally determined to be delinquent in the payment of a tax or other money collected by the comptroller, the Texas Workforce Commission, or the Texas Alcoholic Beverage Commission;

(4) is married to a person described in paragraph (1), (2), or (3) [~~of this subsection~~];

(5) has violated the Act or a rule adopted under the Act [~~by the commission in furtherance of the State Lottery Act~~];

(6) is not an individual, and an individual described in one or more of paragraphs (1) - (5) [~~of this subsection~~]:

(A) is an officer or director of the applicant;

(B) holds more than 10% of any class of issued and outstanding stock in the applicant;

(C) holds an equitable ownership interest greater than 10% in the applicant;

(D) is a creditor of the applicant to the extent of more than 10% of the applicant's outstanding debt at any time after the application is filed but before the director acts to grant or deny the license;

(E) is the owner or lessee of a business that the applicant conducts or through which the applicant will conduct a ticket sales agency;

(F) shares or will share in the profits, other than stock dividends, of the applicant or sales agent;

(G) participates in managing the affairs of the applicant; or

(H) is an employee of the applicant who is or will be involved in selling tickets or handling money from the sale of tickets;

(7) provided false or misleading information on the application form, or failed to provide information required as part of the application;

(8) failed to provide fingerprint identification for individuals for which such identification is requested in a form acceptable to the division following the division's request for such identification;

(9) has previously had a sales agent's license revoked, unless the director is satisfied the person will comply with the [~~State Lottery~~] Act and the rules under this chapter;

(10) failed to certify to the director the applicant's compliance with the federal Americans With Disabilities Act;

(11) is the subject of a license suspension or decision issued under Chapter 232, Family Code;

(12) intends to sell lottery tickets via the Internet [~~internet~~]; or

(13) intends to engage in business exclusively as a Texas Lottery ticket sales agent. For purposes of this section, an applicant "intends to engage in business exclusively as a Texas Lottery ticket sales agent" if the applicant does not sell any goods or services to the public other than Texas Lottery tickets.

(c) Without limiting the foregoing grounds for denial of a license under this subchapter, the director shall deny a license to any person whose location for the sales agency is either:

(1) a location licensed for games of bingo under the Bingo Enabling Act (Occupations Code, Chapter 2001);

(2) on land owned by the State of Texas; or a political subdivision of this state and on which is located a public primary or secondary school, an institution of higher education, or an agency of the state; or

(3) a location for which a person holds a wine and malt beverage retailer's permit, mixed beverage permit, mixed beverage permit with a retailer late hours certificate, private club registration permit, or private club registration permit with a retailer late hours certificate issued under the Alcoholic Beverage Code, Chapter 25, 28, 29, or 32, other than a location for which a person holds a wine and malt beverage retailer's permit issued under Chapter 25, Alcoholic Beverage Code, that derives less than 30 percent of the location's gross receipts from the sale or service of alcoholic beverages.

(d) Any applicant whose application is denied under this subchapter, or who is granted a license the terms of which are more restricted than those applied for, shall be notified by the director in writing of the denial or restriction and of the reasons therefore. The applicant may appeal the director's decision in accordance with rules adopted under this chapter [~~by the commission for that purpose~~].

(e) A license issued under this chapter may by its terms limit the type of games and/or method of sales authorized by the license. A determination of appropriate limitations on any license are within the director's sole discretion, provided that the director shall furnish the licensee with a written explanation of [~~or~~] the reasons for any such limitations.

(f) Based upon consideration of the factors in §140.160(g) [~~§401.160(g) of this title~~] (relating to Standard Penalty Chart), the director may determine a person or organization whose license has been revoked or surrendered, or whose application has been denied for reasons which would justify a revocation of an existing license, will not be eligible to apply for another license earlier than one year from the date of revocation, surrender, or denial.

(g) A person whose license is revoked under Government Code §466.1555(b) and §140.158 (relating to Suspension or Revocation of License) may not apply for a license before the first anniversary of the license revocation date.

§140.157. Provisional License.

In addition to and without limiting the director's ability to issue licenses, the director may issue provisional licenses to applicants to become sales agents. Examples of the reason a provisional license may be issued include but are not limited to a special event and the pendency [~~pendancy~~] of a background check conducted pursuant to Government Code, Chapter 466. A provisional license shall expire on the date specified on the license. A provisional license is subject to suspension or revocation in accordance with the rules adopted [~~procedures established by rules issued by the commission~~] under this title upon the [~~commission~~'s] finding of any factor under §140.153(b) [~~§401.153(b) of this title~~] (relating to Qualifications for License), §140.158 [~~§401.158 of this title~~] (relating to Suspension or Revocation of License), or §140.159 [~~§401.159 of this title~~] (relating to Summary Suspension of License).

§140.158. Suspension or Revocation of License.

(a) The department [~~commission~~] may suspend or revoke any license issued under this subchapter if the department [~~commission~~] finds that any factor listed as grounds for denial of a license under §140.153(b) [~~§401.153(b) of this title~~] (relating to Qualifications for License) or any factor listed in subsection (b) [~~of this section~~] apply to the licensee. The department [~~commission~~] shall inform the sales agent in writing of the decision to suspend or revoke a license for any of these reasons. In addition, in the event of a license suspension under this section, the director [~~of the Lottery Operations Division~~] shall also inform the licensee of the terms under which the suspended license may be reissued.

(b) Without limiting the department's [~~commission's~~] ability to consider factors listed in §140.153(b) [~~§401.153(b) of this title~~] as grounds for suspension or revocation of a license issued under this subchapter, the department [~~commission~~] may also suspend or revoke a license for reasons including, but not limited to, any of the following:

(1) licensee engages in telecommunication or printed advertising that the director determines to have been false, deceptive or misleading;

(2) licensee conditions redemption of a lottery prize upon the purchase of any other item or service;

(3) licensee imposes a restriction upon the redemption of a lottery prize not specifically authorized by the director;

(4) licensee fails to follow instructions and procedures for the conduct of any lottery game, lottery special event or promotion;

(5) licensee and/or its employee(s) exhibit abusive [~~discourteous~~] treatment including, but not limited to, abusive language toward customers, department [~~commission~~] employees or department [~~commission~~] vendors;

(6) licensee fails to establish or maintain reasonable security precautions regarding the handling of lottery tickets and other materials;

(7) licensee fails to deface a validated ticket;

(8) licensee sells a draw game ticket for a draw that has already taken place;

(9) licensee fails to follow validation procedures, including, but not limited to, paying a claim without validating the ticket, failing to pay a valid prize after validating a customer's winning ticket, or retaining a customer's winning ticket that has not been validated;

(10) licensee violates any directive or instruction issued by the director [~~of the Lottery Operations Division~~];

(11) licensee violates any express term or condition of its license not specifically set forth in this subchapter;

(12) licensee sells a scratch ticket from a game that has closed after the date designated for the end of the game;

(13) licensee refuses to refund or properly cancel a Pick 3 or Daily 4 ticket;

(14) licensee fails to return an exchange ticket to a prize claimant claiming a prize on a multi-draw ticket if an exchange ticket is produced by the licensee's terminal;

(15) licensee fails to keep accurate and complete records of all tickets that have not been sold from confirmed, active, and settled packs;

(16) licensee fails to meet any requirement under §140.368 [~~§401.368 of this title~~] (relating to Lottery Ticket Vending Machines), if the licensee has been supplied with a self-service lottery ticket vending machine by the department [~~commission~~];

(17) licensee fails to take readily achievable measures within the allowed time period to comply with the barrier removal requirements regarding the ADA;

(18) licensee fails to prominently post license;

(19) licensee sells tickets that were assigned to another licensed location;

(20) licensee knowingly sells a ticket or pays a lottery prize to another person who is:

(A) an officer or an employee of the department [~~commission~~];

(B) an officer, member, or employee of a lottery operator;

(C) an officer, member, or employee of a contractor or subcontractor that is excluded by the terms of its contract from playing lottery games;

(D) the spouse, child, brother, sister, or parent of a person described by subparagraph (A), (B), or (C) [~~of this paragraph~~] who resides within the same household as that person;

(21) licensee endangers the security and/or integrity of the lottery games operated by the department [~~commission~~];

(22) licensee intentionally or knowingly sells a ticket at a price the licensee knows is greater than the price set by the executive director;

(23) licensee charges a fee for lottery ticket purchases using a debit card, requires an additional purchase with a debit card, and/or requires a minimum dollar amount for debit card purchases of only lottery tickets.

(24) licensee sells tickets at a location that is not licensed;

(25) licensee intentionally or knowingly sells a ticket by extending credit or lends money to enable a person to buy a ticket;

(26) licensee intentionally or knowingly sells a ticket and accepts anything for payment not specifically allowed under the State Lottery Act;

(27) licensee sells tickets over the telephone or Internet, or via mail order sales; or establishes or promotes a group purchase or pooling arrangement under which tickets are purchased on behalf of the group or pool and any prize is divided among the members of the group or pool, and the licensee intentionally or knowingly:

(A) uses any part of the funds solicited or accepted for a purpose other than purchasing tickets on behalf of the group or pool; or

(B) retains a share of any prize awarded as compensation for establishing or promoting the group purchase or pooling arrangement;

(28) licensee intentionally or knowingly alters or forges a ticket;

(29) licensee intentionally or knowingly influences or attempts to influence the selection of a winner of a lottery game;

(30) licensee intentionally or knowingly claims a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation; or aids or agrees to aid another person or persons to claim a lottery prize or a share of a lottery prize by means of fraud, deceit, or misrepresentation;

(31) licensee intentionally or knowingly tampers with, damages, defaces, or renders inoperable any vending machine, electronic computer terminal, or other mechanical device used in a lottery game, or fails to exercise due care in the treatment of department [~~commission~~] property;

(32) licensee:

(A) induces another person to assign or transfer a right to claim a prize;

(B) initiates or accepts an offer to sell the right to claim a prize;

(C) initiates or accepts an offer of compensation from another person to claim a lottery prize; or

(D) purchases, for anything of value, a lottery ticket from a person who is not a licensed lottery retailer;

(33) licensee intentionally or knowingly makes a statement or entry that the person knows to be false or misleading on a required report;

(34) licensee fails to maintain or make an entry the licensee knows is required to be maintained or made for a required report;

(35) licensee knowingly refuses to permit the director [~~of the Lottery Operations Division, the executive director~~], the employees of the department [~~commission, the lottery operator~~], the employees

or agents of the lottery operator, or the state auditor to examine the agent's books, records, papers or other objects, or refuses to answer any question authorized under the State Lottery Act;

(36) licensee intentionally or knowingly makes a material and false or incorrect, or deceptive statement, written or oral, to a person conducting an investigation under the State Lottery Act or a department [~~commission~~] rule;

(37) licensee commits an offense of conspiracy as defined in the State Lottery Act;

(38) licensee sells or offers for sale any interest in a lottery of another state or state government or an Indian tribe or tribal government, including an interest in an actual lottery ticket, receipt, contingent promise to pay, order to purchase, or other record of the interest;

(39) licensee sells to one individual more than 100 lottery tickets in a single transaction, whether draw game tickets, scratch tickets, or any combination;

(40) [~~(39)~~] licensee, with criminal negligence, [~~licensee intentionally or knowingly~~] sells or offers to sell a ticket to a person that the licensee knows is younger than 18 years (revocation only);

(41) [~~(40)~~] licensee incurs four (4) notices of nonsufficient fund transfers or non-transfer of funds within a 12-month period (revocation only);

(42) [~~(41)~~] licensee fails to pay the full amount of money owed to the department [~~commission~~] after a nonsufficient funds transfer or non-transfer of funds to the department's [~~commission's~~] account (revocation only);

(43) [~~(42)~~] licensee knowingly sells tickets to, works with, or otherwise assists a lottery ticket courier service (revocation only); [~~or~~]

(44) licensee knowingly sells or allows the sale of tickets for a lottery game involving a drawing to one or more persons attempting to purchase all or substantially all possible winning tickets for the drawing (revocation only);

(45) licensee fails to verify the age of each ticket purchaser at the point of sale (revocation only);

(46) licensee by telephone, Internet application, or mobile Internet application facilitates the purchase or orders the purchase of a ticket for a lottery game (revocation only);

(47) licensee by telephone, Internet application, or mobile Internet application, for compensation, accepts an order for a ticket for a lottery game from a player, sells a ticket for a lottery game to a player, or arranges to purchase a ticket on behalf of a person playing a lottery game; or arranges for another person to purchase a ticket on behalf of a person playing a lottery game (revocation only);

(48) licensee sells tickets to a person who is not physically present at the retailer's location, a person outside the retailer's licensed location, or to a person outside the normal business hours of the retailer's licensed location (revocation only); or

(49) [~~(43)~~] licensee has violated a provision of the State Lottery Act[~~, Government Code, Chapter 466,~~] or a department [~~commission~~] rule adopted under the [~~State Lottery~~] Act.

(c) For purposes of this chapter, the term "lottery ticket courier service" means a service that, by any remote means, such as telephone, Internet application, or mobile application, accepts and fulfills, for a fee or compensation, orders to purchase lottery tickets on behalf of another person not present to effect an in-person sale.

(d) For purposes of this chapter, the term "ticket" means a single scratch ticket, or a single draw game ticket which may include multiple plays per ticket.

§140.160. Standard Penalty Chart.

(a) The department [~~commission~~], through the executive director or his/her designee [~~of the Lottery Operations Division~~], may offer settlements to persons charged with violating the provisions of the State Lottery Act or rules of the commission. Settlement of those cases, unless otherwise provided for elsewhere in this rule, shall be in compliance with the following standard penalty chart. A settlement will be in the form of an Agreement and Consent Order [~~of the commission~~].

(b) A repeat violation by a licensee justifies the penalty for a second or third violation if it occurs within 12 months of the first violation. Violations need not be the same or similar in nature to previous violations to be considered repeat violations.

(c) A penalty for an alleged repeat violation shall not be assessed unless the alleged violation occurs after the licensee has been notified, in writing, of the first alleged violation. Notwithstanding the preceding sentence, if an alleged violation is discovered during an undercover operation, then no notice of any prior alleged violations may be necessary to assess a penalty for a repeat violation. The requirement that written notice be given to a licensee shall not be interpreted to require that a notice of hearing for the violation be delivered to the licensee.

(d) The list of violations in the standard penalty chart is not an exclusive list of violations of the Act [~~commission~~] or rules of the commission. The executive director or commission is authorized to assess penalties for a [~~any~~] violation of any of the foregoing statutes or rules for which a penalty is not provided on the chart. Any penalty assessed for a violation not provided for on the standard penalty chart shall be approved by the director [~~of the Lottery Operations Division or his/her designee~~] prior to its assessment.

(e) Any person responsible for assessing a penalty for a violation may, unless otherwise required by statute, deviate from the standard penalty chart if mitigating circumstances are involved and consideration will be given to all the factors listed in subsection (g) [~~of this section~~]. If a recommendation deviating from the standard penalty chart is made, it must be made in writing and [~~be~~] filed with the case report. Final approval shall be made by the director [~~of the Lottery Operations Division or his/her designee~~].

(f) Unless otherwise provided by statute, the [~~The~~] standard penalty chart does not bind an administrative law judge or the commission as to penalties for any violation determined to have occurred by the facts presented in an administrative hearing and the record of that proceeding shall be the determining factor as to the sufficiency of the penalty assessed.

(g) Based upon consideration of the following factors, the executive director or commission may, unless otherwise required by statute, impose penalties other than the penalties recommended in §140.158 [~~§401.158 of this title~~] (relating to Suspension or Revocation of License) and/or this section:

(1) Severity of the offense;

(2) Danger to the public;

(3) Number of repetition of offenses;

(4) Number of complaints previously found justified against the licensee;

(5) Length of time the licensee has held a license;

(6) Actual damage, physical or otherwise, caused by the violations;

(7) Deterrent effect of the penalty imposed;

(8) Attempts by licensee to correct or stop violations or refusal by licensee to correct or stop violations;

(9) Penalties imposed for related offenses;

(10) Current employment status of any employee(s) that committed violation(s); or

(11) Any other mitigating or aggravating circumstances.

(h) Standard Penalty Chart.
Figure: 16 TAC §140.160(h)
[~~Figure: 16 TAC §401.160(h)~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Deanne Rienstra
General Counsel
Texas Department of Licensing and Regulation
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For further information, please call: (512) 344-5392

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SUBCHAPTER E. RETAILER RULES

16 TAC §§140.355, 140.368, 140.369

The proposed rules are proposed under Texas Government Code, Chapter 466, and Texas Occupations Code, Chapter 51, which authorize the Texas Commission of Licensing and Regulation, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed rules are those set forth in Texas Government Code, Chapter 466, and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposed rules.

The legislation that enacted the statutory authority under which the proposed rules are to be adopted are Senate Bill (SB) 1346 and SB 3070, 89th Legislature, Regular Session (2025).

§140.355. Restricted Sales.

(a) Retailers shall not sell lottery tickets via the Internet or by mail, phone, fax, or other similar method of communications. Retailers shall not sell a lottery ticket or any other document evidencing a right, privilege, or share in a lottery ticket from another jurisdiction by any means.

(b) Retailers shall not knowingly sell tickets to, work with, or otherwise assist a lottery ticket courier service.

(c) Retailers shall not sell tickets to persons under the age of 18. Any ticket purchased by or sold to an individual under the age of 18 years shall be void and the prize otherwise payable on the ticket is treated as an unclaimed prize under Texas Government Code §466.408.

(d) Each retailer shall electronically access the electronically readable information on each ticket purchaser's driver's license, commercial driver's license, or personal identification certificate to verify the ticket purchaser is 18 years of age or older. If the retailer cannot access the electronically readable information, the retailer may visually inspect the ticket purchaser's driver's license, commercial driver's license, or personal identification certificate to verify the ticket purchaser is 18 years of age or older.

(e) [~~(d)~~] Retailers shall not sell a ticket or pay a lottery prize to another person that the retailer knows is:

(1) an officer or an employee of the department [~~commission~~];

(2) an officer, member, or employee of a lottery operator;

(3) an officer, member, or employee of a contractor or subcontractor that is excluded by the terms of its contract from playing lottery games;

(4) the spouse, child, brother, sister, or parent of a person described by paragraph (1), (2), or (3) [~~of this subsection~~] who resides within the same household as that person.

(f) [~~(e)~~] Retailers shall not sell tickets from a game after the game's closing date.

(g) Retailers shall not sell to one individual more than 100 lottery tickets in a single transaction, whether draw game tickets, scratch tickets, or any combination.

(h) Retailers shall not sell tickets to a person who is not physically present at the retailer's location, a person outside the retailer's licensed location, or to a person outside the normal business hours of the retailer's licensed location.

§140.368. Lottery Ticket Vending Machines.

(a) No sales agent may distribute or sell lottery game tickets from a lottery ticket vending machine, except those lottery ticket vending machines supplied and placed by the department [~~commission~~]. For purposes of this section lottery ticket vending machine is defined as a ticket dispensing machine that dispenses lottery game tickets without the assistance of a sales agent's personnel.

(b) Lottery ticket vending machines may be placed by the department [~~commission~~] in a sales agent's location based upon criteria established by the executive director or his/her designee. The criteria may include consideration of the location of the sales agent, the type of the sales agent's location, e.g., grocery store, the size of the sales agent's location, and minimum sales criteria that shall be provided to the sales agents prior to implementation of such criteria.

(c) A lottery sales agent must maintain the minimum sales criteria established by the executive director in order to obtain and retain a lottery ticket vending machine. A sales agent who does not maintain minimum sales in accordance with such sales criteria may be placed in a sales review period unless good cause exists as determined by the executive director. After the sales agent's sales review period has expired, the sales agent's sale of lottery game tickets shall be reviewed. If the sales agent has not maintained the minimum sales in accordance with the minimum ticket sales criteria during such sales review period, the department [~~commission~~] or department's [~~commission's~~] designated representative may remove the lottery ticket vending machine.

(d) The minimum sales criteria established by the executive director shall be provided to the sales agents at least 30 days prior to imposition of such minimum sales criteria.

(e) Lottery ticket vending machines may only be placed within the sales agent's location in a site approved by the department [~~commission~~].

(f) A lottery sales agent may redeem any lottery prize of less than $600.

(g) Every lottery sales agent location equipped with a lottery ticket vending machine(s) will be provided a remote shut off device to allow for the control of sales transactions.

(h) A lottery sales agent shall keep the lottery ticket vending machine stocked with printer supplies and tickets.

(i) A lottery sales agent shall provide designated sales reports to the department [~~commission~~] or the department's [~~commission~~'s] designated representative(s).

(j) A lottery sales agent shall undergo required training relating to the use and maintenance of lottery ticket vending machines prior to ticket sales from the lottery ticket vending machine.

(k) A lottery sales agent shall allow department [~~commission~~] designated service technicians access to the lottery ticket vending machine to allow service and repair of the lottery ticket vending machine.

(l) A sales agent is expected to make every reasonable effort to provide player resolution at the retail location if a player's lottery purchase, or attempted purchase, from a lottery vending machine results in a need to refund the player's money. The sales agent is to contact the Retailer Services [~~Lottery Operations Division~~] for service to resolve a mechanical error and the department [~~commission~~] to request any refund due to player reimbursement. Resolution due to player errors or requests for ticket cancellations must follow the specific lottery game rule for the game played.

§140.369. Limitations on Certain Lottery Equipment.

(a) A sales agent's licensed location may not be supplied with more than five traditional lottery terminals unless approved by the director, and the number of terminals must not be disproportionate to the amount of legitimate retail business conducted at the location.

(b) A sales agent's licensed location may not be supplied with more than five lottery vending machines unless approved by the director, and the number of machines must not be disproportionate to the amount of legitimate retail business conducted at the location.

(c) Promotional events conducted by the Texas Lottery are temporarily exempt from the five-terminal limit for the duration of the event, and the retailer may be supplied with additional equipment as approved by the director to support promotional activities.

(d) For the purposes of this section, a "traditional lottery terminal" refers to a clerk-operated device solely dedicated to processing lottery transactions, printing tickets, and validating winning tickets.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Deanne Rienstra
General Counsel
Texas Department of Licensing and Regulation
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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.18

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter A, §1.18, Operation of Education Resource Centers. Specifically, this repeal removes the Educational Resource Center rule so that it can be replaced with an updated subchapter.

Texas Education Code, §61.027, provides the Coordinating Board with general rule making authority. Texas Education Code, §1.005 and §1.006, govern Education Resource Centers.

Rule 1.18, Operation of Education Resource Centers, repeals a rule that will be replaced with an updated subchapter.

Melissa Humphries, Assistant Commissioner for Data Management and Research, has determined that for each of the first five years the section is in effect, there would be no fiscal implications for state or local governments as a result of enforcing or administering the rule. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Melissa Humphries, Assistant Commissioner for Data Management and Research, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be to repeal the Educational Resource Center rule that will be replaced with an updated subchapter. There are no anticipated economic costs to persons who are required to comply with the section as proposed.

Government Growth Impact Statement

(1) the rule will not create or eliminate a government program;

(2) implementation of the rule will not require the creation or elimination of employee positions;

(3) implementation of the rule will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rule will not require an increase or decrease in fees paid to the agency;

(5) the rule will not create a new rule;

(6) the rule will not limit an existing rule;

(7) the rule will not change the number of individuals subject to the rule; and

(8) the rule will not affect this state's economy.

Comments on the proposed rule or information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research or analysis, may be submitted to Melissa Humphries, Assistant Commissioner for Data Management and Research, P.O. Box 12788, Austin, Texas 78711-2788, or via email at RulesComments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The repeal is proposed under Texas Education Code, Section 61.027, which provides the Coordinating Board with the authority to make rules and Texas Education Code, Sections 1.005and 1.006, which govern Education Resource Centers and the Advisory Board.

The proposed repeal affects Texas Education Code, Sections 1.005 and 1.006.

§1.18. Operation of Education Resource Centers.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2026.

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Douglas Brock
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6546

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SUBCHAPTER H. CERTIFICATION ADVISORY COUNCIL

19 TAC §§1.136, 1.139 - 1.141

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter H, §1.136 and §§1.139 - 1.141, concerning Certification Advisory Council. Specifically, these amendments will align the rules with the new rules on private postsecondary institutions in the new proposed Chapter 7.

Texas Education Code, §61.314, authorizes these amendments.

Rule 1.136, Definitions, is amended to align the definitions with the definitions in the new proposed Chapter 7.

Rule 1.139, Meetings, is amended to remove a reference to a Board Committee that no longer meets.

Rule 1.140, Tasks Assigned to the Council, is amended to align with the terminology used in the new Proposed Chapter 7.

Rule 1.141, Report to the Board; Evaluation of Council Costs and Effectiveness, is amended to remove an unnecessary requirement.

Daniel Pérez, Associate Commissioner for Academic and Workforce Initiatives, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Daniel Pérez, Associate Commissioner for Academic and Workforce Initiatives, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be to align the Certification Advisory Council rules with the new rules on private postsecondary institutions in the new proposed Chapter 7. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposed rules or information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research or analysis, may be submitted to, Daniel Pérez, Associate Commissioner for Academic and Workforce Initiatives, P.O. Box 12788, Austin, Texas 78711-2788, or via email at RulesComments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 61.314.

The proposed amendment affects Texas Education Code, Section 61.314.

§1.136. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings:

(1) Board--The governing Board of the agency known as the Texas Higher Education Coordinating Board.

(2) Commissioner--The Commissioner of Higher Education. [~~, the Chief Executive Officer of the Board.~~]

(3) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board and its staff.

(4) [~~(3)~~] Certificate of Authority--Statutory term under Texas Education Code, §61.304, used for temporary authorization granted by the Board to a non-exempt institution which does not have Coordinating Board-recognized institutional accreditation. This chapter refers to a Certificate of Authority as a Provisional Certificate to Operate. [~~The Board's approval of postsecondary institutions (other than exempt institutions), with operations in the State of Texas, to confer degrees or courses applicable to degrees, or to solicit students for enrollment in institutions that confer degrees or courses applicable to degrees.~~]

[~~(4) Exempt Institution--An institution that is accredited by an agency recognized by the Board under §7.6 of this title (relating to Recognition of Accrediting Agencies), or is defined as a "private~~

~~or independent institution of higher education" under Texas Education Code, §61.003(15), or is a career school or college that applies for and is declared exempt under this chapter, by the Texas Workforce Commission as described in Texas Education Code, §61.303(a), or Texas Education Code, Chapter 132, respectively. Exempt institutions must comply with certain Board rules.~~]

[~~(5) Postsecondary Educational Institution--An educational institution which:~~]

[~~(A) is not a public community college, public technical college, public senior college or university, medical or dental unit or other agency as defined in Texas Education Code, §61.003;~~]

[~~(B) is incorporated under the laws of this state, or maintains a place of business in this state, or has an agent or representative present in this state, or solicits business in this state; and~~]

[~~(C) furnishes or offers to furnish courses of instruction in person, by electronic media, by correspondence, or by some means or all leading to a degree; provides or offers to provide credits alleged to be applicable to a degree; or represents that credits earned or granted are collegiate in nature, including describing them as "college-level," or at the level of any protected academic term.~~]

[~~(6) Private Postsecondary Educational Institution--An institution which:~~]

[~~(A) is not an institution of higher education as defined by Texas Education Code, §61.003;~~]

[~~(B) is incorporated under the laws of this state, maintains a place of business in this state, has an agent or representative presence in this state, or solicits business in this state; and~~]

[~~(C) furnishes or offers to furnish courses of instruction in person, by electronic media, or by correspondence leading to a degree or providing credits alleged to be applied to a degree.~~]

(5) [~~(7)~~] Recognized Accrediting Agency--Any accrediting agency the standards of accreditation or membership for which have been found by the Board to be sufficiently comprehensive and rigorous to qualify its institutional members for an exemption from the operation of Chapter 7 of this title (relating to Degree Granting Colleges and Universities Other Than Texas Public Institutions).

(6) [~~(8)~~] Site visit report--The report produced by the site review team in accordance with the procedures outlined in Chapter 7. [~~, Subchapter A, §7.8(3)(I) of this title (relating to Institutions Not Accredited by a Board Recognized Accreditor).~~]

§1.139. Meetings.

The council shall meet on a quarterly basis scheduled no later than the first day of the month prior to the month that the Board [~~Committee on Academic and Workforce Success~~] meets. A quarterly meeting may be cancelled if no actions are pending requiring advice from the Certification Advisory Council. A quarterly meeting may be rescheduled if a quorum of members cannot be met. Special meetings may be called as deemed appropriate by the presiding officer. Meetings shall be open to the public and broadcast via the web, unless prevented by technical difficulties, and minutes shall be made available to the public after they have been prepared by the Board staff and reviewed by members of the council.

§1.140. Tasks Assigned to the Council.

Tasks assigned to the council may include:

(1) Review the site visit report and an institution's response for each Provisional Certificate to Operate [~~Certificate of Authority~~] application;

(2) Make recommendations regarding the Provisional Certificate to Operate [~~Certificate of Authority~~] application to the Board;

(3) Review requests by an accrediting agency for recognition by the Board; and

(4) Perform other duties related to certification that the Board requests of the council.

§1.141. Report to the Board[~~; Evaluation of Council Costs and Effectiveness~~].

The council presiding officer shall timely report any recommendations to the Board [~~but~~] on no less than an annual basis. [~~The council shall also report council activities to the Board to allow the Board to properly evaluate the council's work, usefulness, and the costs related to the council's existence. The Board shall report its evaluation to the Legislative Budget Board in its biennial Legislative Appropriations Request.~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Douglas Brock
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER Y. EDUCATION RESEARCH CENTERS

19 TAC §§1.280 - 1.287

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 1, Subchapter Y, §§1.280 - 1.287, concerning Education Research Centers. Specifically, these new sections will clarify the standards for approval of projects by Education Research Centers (ERCs) and provide updated operational rules for the ERCs.

Texas Education Code, §1.005 and §1.006, govern ERCs and the ERC Advisory Board.

Texas Education Code §61.027, provides the Coordinating Board with general rule making authority.

Rule 1.280, Definitions, provides definitions of terms used in the subchapter.

Rule 1.281, Establishment of ERCs, provides the framework for establishing Education Research Centers.

Rule 1.282, Responsibility of Parties, outlines the respective roles of the Coordinating Board and sponsoring Institutions of Higher Education.

Rule 1.283, Privacy and Data Security, outlines required data security standards.

Rule 1.284, Suspension and Revocation, provides a process for revoking or suspending data access.

Rule 1.285, Advisory Board, outlines the role of the ERC Advisory Board.

Rule 1.286, Operation of an ERC, identifies the structure, role, and responsibility of an ERC.

Rule 1.287, Sanctions and Termination, provides a process for handling a situation where an ERC is not in compliance with its statutory responsibility or these rules.

Melissa Humphries, Assistant Commissioner for Data Management and Research, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Melissa Humphries, Assistant Commissioner for Data Management and Research, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be to clarify the standards for approval of projects ERCs and provide updated operational rules for the ERCs. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposed rules or information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research or analysis, may be submitted to Melissa Humphries, Assistant Commissioner for Data Management and Research, P.O. Box 12788, Austin, Texas 78711-2788, or via email at RulesComments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Education Code, Section 61.027, which provides the Coordinating Board with the authority to adopt rules.

The proposed new sections affect Texas Education Code, Sections 1.005 and 1.006.

§1.280. Definitions.

The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) "Board" refers to the governing Board of the agency known as the Texas Higher Education Coordinating Board.

(2) "Commissioner" refers to the Commissioner of Higher Education.

(3) "Coordinating Board" refers to the agency known as the Texas Higher Education Coordinating Board and its staff.

(4) ERC means an Education Research Center.

(5) Advisory Board means the ERC Advisory Board.

(6) "FERPA" means the Family Educational Rights and Privacy Act, 20 U.S.C. §1232g, including regulations and informal written guidance issued by the United States Department of Education, or successor federal agency, and any amendments or supplementation thereof.

(7) "Cooperating Agencies" refers to the Texas Education Agency (TEA), the Texas Higher Education Coordinating Board (CB), and the Texas Workforce Commission (TWC).

(8) "P-20/Workforce Data Repository" refers to the collection of data maintained by an education research center, including data provided by each Cooperating Agency.

(9) "Texas-based institution or organization" refers to an institution of higher education, government agency, or other organization with a physical presence in the state of Texas.

(10) "Qualified researcher" means an individual who:

(A) holds a graduate degree, is enrolled in a graduate-level program, or has equivalent professional research experience of at least 10 years and a bachelor's degree;

(B) is affiliated with an accredited institution of higher education, government agency, or other recognized public or private research organization, and demonstrates the ability to conduct research relevant to education or workforce outcomes in Texas;

(C) is approved to access data solely for an authorized research project under the ERC; and

(D) agrees to comply with all applicable federal and state laws, including the Family Educational Rights and Privacy Act (FERPA), and all ERC data security requirements.

(11) "Benefit to the State of Texas" means a demonstrated contribution to the improvement, evaluation, or advancement of education in this state. A proposed study or evaluation provides a benefit to the State of Texas if it:

(A) addresses a policy, program, practice, population, pathway, institution, or system related to a TEA, TWC, or CB stated priority;

(B) is designed to produce findings, evidence, tools, or actionable insights that may inform decision-making, practice, policy, or program improvement in Texas education systems;

(C) requires access to confidential administrative data to achieve the stated research purpose and limits use of such data to the approved purpose;

(D) is not conducted for commercial, marketing, or private financial gain;

(E) complies with applicable state and federal law, agency rules, data governance requirements, and approved ERC policies and procedures; and

(F) requires the qualified researcher to submit all required project closeout materials, including a policy brief in a form and manner prescribed by the Coordinating Board, within 30 days after the conclusion of the approved project period. The policy brief must summarize the study's purpose, data used, methodology, key findings, limitations, and implications for Texas education policy, practice, programs, or systems. If the qualified researcher does not submit all required closeout materials within 30 days after the conclusion of the approved project period, the ERC shall suspend access to confidential administrative data for the approved project until the requirements are completed, unless an extension is approved by the Coordinating Board.

(12) "Commissioner-directed project" means a research initiative designated by the Commissioner of Education, the Commissioner of Higher Education, or the Chairman of the Texas Workforce Commission to conduct a study or evaluation using data available through an education research center to address an identified agency need or priority and demonstrates a clear and substantive benefit to the state of Texas.

(13) "Confidential Information" as applied to data in the P-20/Workforce Data Repository provided to an ERC includes all individual-level data, including any data cells small enough to allow identification of an individual. All data cells containing between one and four individuals, inclusive, shall be masked to stop re-identification.

(14) "Institution of Higher Education" means an educational institution as defined in Texas Education Code, §61.003.

§1.281. Establishment of ERCs.

(a) ERCs shall be established by the Coordinating Board.

(b) An ERC may only be established at a sponsoring institution of higher education but may be awarded to a consortium of such institutions.

(c) An ERC must be physically located within Texas and must retain all data at that location except for secure off-site data back-up in accordance with written procedures approved by the Advisory Board. Individual level data from the ERC P-20/Workforce Data Repository may not be provided to a qualified researcher except in the following ways:

(1) Individual-level data may be provided to a qualified researcher at an ERC or the Coordinating Board or an institution of higher education located in Texas that is an acknowledged consortium member of the ERC;

(2) Individual-level data may be accessed by approved qualified researchers via secure, restricted, VPN remote access provided all other provisions of this chapter are met and established policies are followed; or

(3) Remote access may be limited based on system capacity, data security requirements, and available resources. An ERC may establish reasonable limits on the number of remote access projects.

§1.282. Responsibility of Parties.

(a) The Coordinating Board is responsible for general oversight and technical assistance of ERCs, except as otherwise provided in this chapter. Policy decisions shall be approved by the Coordinating Board.

(b) Sponsoring institutions of higher education are responsible for all equipment, salaries and other operating costs of an ERC, including documented staff time and equipment at TEA and the Coordinating Board necessary to prepare and maintain data for the ERCs, as well as reasonable reimbursable expenses of the Advisory Board.

(1) Costs will include actual documented expenses for staff at TEA and Coordinating Board along with associated data storage costs as set by the Department of Information Resources for the data center consolidation rates unless otherwise agreed to by the Coordinating Board and the ERCs.

(2) ERCs may establish and assess reasonable charges for data access and related services, subject to review and oversight by the Coordinating Board. Such charges must be applied in a consistent manner and reflect the level of effort and resources required to support the project, including factors such as project scope, complexity, and administrative or technical requirements.

§1.283. Privacy and Data Security.

(a) Qualified researchers and ERCs must comply with FERPA, and the implementing federal regulations, 34 C.F.R. Part 99. Qualified researchers and ERCs must protect student data with reasonable data security procedures for any confidential student information they receive or access that could make a student's identity traceable or identifiable.

(b) ERCs may provide qualified researchers access to shared data only through secure methods subject to the qualified researcher executing an agreement to abide and comply with FERPA.

(c) Each ERC shall adopt rules or policies approved by the Advisory Board to protect the confidentiality of information used or stored at the ERC in accordance with applicable state and federal law. These rules or policies shall establish procedures to ensure that confidential information is not duplicated or removed from an ERC or from a remote access interface in an unauthorized manner.

§1.284. Suspension and Revocation.

(a) The Coordinating Board, in coordination with cooperating agencies, may suspend, limit, or revoke a qualified researcher's access to ERC data at any time for failure to comply with applicable law, Board rules, data use agreements, or ERC policies and procedures. Suspension or revocation may result in termination of the project and denial of future access to ERC data.

(b) Data access privileges shall be suspended or revoked for all qualified researchers associated with a project if the required policy brief is not submitted within 30 days of the conclusion of the active project period. Such suspension shall apply to all current access and future requests across any ERC project, and privileges shall remain suspended until the outstanding policy brief is submitted to and accepted by the Coordinating Board.

§1.285. Advisory Board.

(a) The Commissioner shall create and maintain an advisory board to review and approve, as it deems appropriate, research involving access to confidential information and to adopt policies and rules governing the protection of such information in ERC operations. The Advisory Board is considered to be a governmental body for purposes of Chapters 551 and 552 of the Texas Government Code.

(b) Membership of the Advisory Board shall include, at a minimum:

(1) The Commissioner or designee, as Chair;

(2) A representative of TEA, designated by the Commissioner of Education;

(3) A representative of the Coordinating Board, designated by the Commissioner;

(4) A representative of the TWC, designated by the TWC;

(5) The Director of each ERC, who shall formally appoint a designee to serve as an alternate representative and ensure continuous representation on the Advisory Board;

(6) A representative of preschool, elementary, or secondary education, designated by the Commissioner of Education; and

(7) A representative of higher education, designated by the Commissioner.

(c) The Advisory Board will review each study or evaluation proposal. A study or evaluation proposal must be approved in advance by majority vote of the Advisory Board before it can be conducted at an ERC. The Advisory Board's review of a proposal must include the following factors:

(1) The benefit to the state of Texas;

(2) The quality of the research design and methodology;

(3) The extent to which the data required to complete the proposed study or evaluation is not readily available from other sources;

(4) Whether the requested data are necessary to achieve the stated research purpose;

(5) Whether the proposal project period is appropriate to the scope and purpose of the research; and

(6) Whether the proposal involves the development of dashboards, applications, or other data tools, and if so, whether the intended use is clearly described and consistent with this chapter.

(d) The Advisory Board will decide if a submitted proposal falls under the "studies" exception or the "audit/evaluation" exception described in FERPA and its implementing regulations. Should a proposed study or evaluation not be permitted by FERPA or its implementing regulations, the proposal will be denied.

(e) The sponsoring ERC will enter into a written agreement with each qualified researcher mandating the qualified researcher's compliance with FERPA.

(f) The Advisory Board shall meet at the call of the Chair at least quarterly and such meetings will be open to the public.

(g) Meetings may be conducted by electronic means, including telephonic, video conference call, Internet, or any combination of those means.

(h) The Advisory Board may create committees and subcommittees as it deems necessary or appropriate.

§1.286. Operation of an ERC.

(a) An ERC may operate only under written authorization by the Coordinating Board. Status as an ERC may not be assigned, delegated or transferred to any other entity.

(b) An ERC shall be led by a managing director who is an employee of the sponsoring institution of higher education. The managing director shall report directly to the chief operating officer of the sponsoring institution of higher education unless a different reporting structure is approved by the Coordinating Board.

(c) All research at an ERC involving access to any data, including confidential information, shall be conducted with the approval of the Advisory Board. All remote access research at an ERC involving access to confidential information shall be conducted with the approval of the Advisory Board.

(d) All research conducted at an ERC shall be limited to a defined project period appropriate to the scope and purpose of the approved study or evaluation. Standard project timelines and evaluation intervals shall be governed by criteria specified within the Advisory Board Operating Procedures. The Advisory Board shall review the proposed project period and any requests for extension to ensure alignment with the research purpose, data necessity, and benefit to the state of Texas. The Advisory Board shall require qualified researchers to file a new project application if an extension request will cause the project to extend past ten years from the date of original approval, to justify the continued benefit to the state of Texas and continued use of student data beyond ten years, unless good cause is shown.

(e) ERCs shall monitor the status of approved research projects and maintain records of project activity. Projects that cannot be completed as approved, involve significant changes in scope, or raise data security or compliance concerns may be presented to the Advisory Board for notification or further action, as appropriate.

(f) Confidential information provided to an ERC shall be protected by procedures to ensure that any unique identifying number is not traceable to any individual. Such procedures must be maintained as confidential by participating agencies and may not be shared with an ERC or used for any other purpose. Under no circumstances may Social Security Numbers, names, birthdates, or addresses be accessed for the purpose of research at an ERC.

(g) ERCs shall adopt written procedures for research conducted using confidential information, subject to FERPA and approval by the Advisory Board. An ERC may not access confidential information until all such procedures are approved. Such procedures shall include:

(1) Measures to ensure against unauthorized disclosure of confidential information;

(2) Independent review of all research products/results by a designated ERC staff person not involved in that specific project to ensure against unauthorized disclosure of confidential information in accordance with guidelines adopted under FERPA;

(3) Measures to ensure that confidential information is not copied or removed from the ERC;

(4) Annual certification of full compliance with all requirements of state and federal laws and regulations regarding the use of confidential information for research purposes by the internal auditor of each participating institution of higher education;

(5) Before final approval of a research proposal by the Advisory Board, the qualified researcher must certify that the research proposal complies with their home institution's institutional review board (IRB) or similar research review board with oversight over research design, including any applicable requirements for research involving human subjects. The ERC shall maintain evidence of approval from the IRB or justification for exclusion from the IRB process before a qualified researcher has access to any data;

(6) Criteria for allocating research access capacity for qualified researchers not affiliated with the sponsoring institutions of higher education, including consideration of the project's benefit to the state of Texas, alignment with the mission of the ERC, involvement of Texas-based institutions or organizations, availability of resources, and the level of effort required to support the project; and

(7) Requirements governing remote access, including compliance with applicable data security standards and restrictions necessary to protect confidential information.

(h) All final research reports or analysis produced at an ERC shall:

(1) Be made available upon request to the cooperating agencies;

(2) A single copy shall be made available to the cooperating agencies of any copywritten publications at no cost to the cooperating agencies, including a final manuscript PDF; institutionally produced or non-copyright publications shall be available for public distribution, copying or reproduction at no cost to the cooperating agencies; and

(3) Contain a disclaimer in a form acceptable to the cooperating agencies stating that the conclusions of the research do not necessarily reflect the opinion or official position of those entities or of the state of Texas;

(i) An ERC shall comply with the requirements of the Texas Public Information Act, including requirements relating to data manipulation. Charges for processing Public Information Act requests shall be based on guidelines developed by the Texas Attorney General's Office.

(j) A sponsoring institution of higher education shall cooperate fully with all audit requests made by the Coordinating Board or the Advisory Board. Each ERC shall annually request and undergo a security audit performed by the Texas Department of Information Resources, or a contractor approved by that department, which shall include a penetration test of computer equipment and access, and provide the results thereof to the Coordinating Board.

(k) Research projects that require access to data not then included in the database maintained by the Coordinating Board for research will be provided by the cooperating agencies if available. An ERC will be charged the cost to process or manipulate such data.

§1.287. Sanctions and Termination.

(a) Upon a determination that confidential information has been released or has been copied to another location, or that appropriate security measures are not in place to protect confidential information, the Coordinating Board may, in addition to other remedies set forth in this section, require an ERC to obtain appropriate services or equipment or to remove confidential information from such other location to remedy a security deficit. Such services or equipment shall be purchased by the ERC from vendors subject to approval of the Coordinating Board.

(b) The ERC under review shall be required to pay all reasonable costs to the Coordinating Board for time necessary to re-audit and ensure appropriate security measures are in place after a possible breach occurs.

(c) An ERC may be terminated by the Coordinating Board for failure to meet the requirements of state or federal law, of this subchapter, or of the terms of a contract establishing the ERC. An ERC shall be entitled to an informal review of a determination to terminate its status by a designee of the Commissioner prior to the effective date of the termination. An ERC shall return all confidential data to the Coordinating Board within five (5) days of its receipt of a notice of termination and shall not retain a copy, replica, or duplicate thereof, whether in whole or in part. The Commissioner may suspend an ERC while determining whether the ERC's failure to meet the requirements of state or federal law, of this subchapter, or of the terms of a contract establishing the ERC are of such significance to warrant termination. An ERC may not operate while it is suspended.

(d) Notice of termination under subsection (c) of this section shall be provided to the ERC's designated representative and shall contain information regarding the reasons for the termination.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Douglas Brock
General Counsel
Texas Higher Education Coordinating Board
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CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER D. DUAL CREDIT PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND TEXAS PUBLIC COLLEGES

19 TAC §§4.81 - 4.88

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 4, Subchapter D, §§4.81 - 4.87, and new §4.88, concerning Dual Credit Partnerships Between Secondary Schools and Texas Public Colleges. Specifically, these amendments and new rule will improve transparency and implementation of dual credit rules. The Coordinating Board used negotiated rulemaking to consider the proposed amendments to the rules. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

Texas Education Code, §28.009(b), §28.0095, §61.059(p), §130.001(b)(3) - (4) and §130.008, provide the Coordinating Board with the authority to regulate dual credit partnerships between public institutions of higher education and secondary schools with regard to lower division courses, and provide funding for dual credit courses, including courses offered under the FAST program.

Section 4.81, Purpose, is amended to specify that this subchapter is to provide rules and regulations for public institutions of higher education to engage in dual credit partnerships with secondary schools, including dual credit partnerships that are eligible for participation in the Financial Aid for Swift Transfer (FAST) Program pursuant to Chapter 13, Subchapter Q of this title.

Section 4.82, Authority, is amended to specify that Education Code, §§28.009(b), 28.0095, 61.059(p), 130.001(b)(3) - (4) and 130.008 provide the Coordinating Board with the authority to provide funding for dual credit courses, including courses offered for dual credit under the FAST program.

Section 4.83, Definitions, is amended by removing definitions for Avocational Course and Equivalent of a Semester Credit Hour. The definition of Career and Technical Education Course in this subchapter was replaced and is defined as a college-level course awarding semester credit hours and contained in the Workforce Education Course Manual (WECM). A definition of Dual Credit was added and defined as a system under which an eligible high school student enrolls in college course(s) and receives credit for the course(s) from both the college and the high school. The definition of Dual Credit Course was replaced and defined as a course for which a student earns joint high school and college credit at an institution of higher education under Education Code, §130.008 or §28.009, and is one of the following course types: (i) a core curriculum course of the institution of higher education; (ii) a career and technical education course; (iii) a foreign language course. Language was added to specify that an Early College Education Program (Early College High School) or Other Early College Program may offer courses for dual credit that are not limited to dual credit courses types defined in this section if the course assists a student in earning a Board-approved certificate or associate degree while in high school. A definition of Early College Education Program (Early College High School) was added and defined as an early college education program as defined in, and meeting the requirements of, Texas Education Code, §29.908. A definition of Other Early College Program was added and defined as an early college program developed via an institutional agreement in partnership between an institution of higher education and a high school or school district that offers a course or courses that assist a student in earning a Board-approved certificate or associate degree while in high school. The definitions in this section were renumbered to account for those definitions that were added or removed.

Section 4.84, Institutional Agreements, is amended by removing language that requires institutions of higher education to report to the Coordinating Board a list of school districts and private schools with which it has agreements under this section, and the URL where these agreements are posted on the institution's Internet website. Reference to Texas Education Code, 130A.004 and 130A.101(c)(3), were removed as statutes from which statewide goals were developed.

Section 4.85, Dual Credit Requirements, is amended by replacing title of subsection (b) Student Eligibility with Student Eligibility for Dual Credit Course Enrollment. Language was added that: (1) requires a high school student to attend a public school, private school, parochial school, or a home school, to enroll in a dual credit course; (2) allow students to enroll in course that does not require demonstration of Texas Success Initiative college readiness, or a course that is part of a Level 1 workforce education certificate, without having to demonstrate enrollment eligibility requirements applicable to an academic course or a workforce education course that is part of a Level 2 workforce education certificate or an applied associate degree and requires demonstration of Texas Success Initiative college readiness. Language was added require a student who enrolls in an academic course, or a workforce education course that is part of a Level 2 workforce education certificate or an applied associate degree, and requires demonstration of Texas Success Initiative college readiness, to: (1) demonstrate that they are exempt under the provisions of the Texas Success Initiative as set forth in §4.54 (relating to Exemption), (2) demonstrate college readiness by achieving the minimum passing standards under the provisions of the Texas Success Initiative as set forth in §4.57 (relating to Texas Success Initiative Assessment College Readiness Standards) on relevant section(s) of an assessment instrument approved by the Board as set forth in §4.56 (relating to Texas Success Initiative Assessment Instrument); (3) meet the eligibility requirements for a Texas First Diploma under §4.402 (relating to Eligibility for Texas First Diploma); or (4) Achieve one of the following scores relevant to the Texas Success Initiative eligibility requirements of the course:

(I) State of Texas Assessment of Academic Readiness End of Course (STAAR EOC)

(-a-) a minimum score of 4000 on the English II STAAR EOC; and/or

(-b-) a minimum score of 4000 on the Algebra I STAAR EOC and passing grade in the Algebra II course;

(II) Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT)

(-a-) a score of 460 on the evidence-based reading and writing (EBRW) test; and/or

(-b-) a score of 510 on the mathematics test;

(III) PreACT

(-a-) a combined score of 40 on the English and Reading (E+R) tests; and/or

(-b-) score of 22 on the mathematics test.

Language was added that requires an institution of higher education to apply the same enrollment and admission criteria and conditions for a high school student who attends a public, private, parochial, or home school, in accordance with Texas Education Code, §51.9675 (Equal Access to Dual Credit Courses). Language was added that states an institution of higher education is not required to offer dual credit courses for high school students.

Section 4.86, Optional Dual Credit or Dual Enrollment Program: College Connect Courses, is amended by adding language to update the title of Texas Administrative Code §4.57 to Texas Success Initiative Assessment College Readiness Standards. Language was added to update the title of Texas Administrative Code §4.87 to Dual Credit Course Funding.

Section 4.87, Dual Credit Course Funding, is amended by replacing the language of subsection (a) Funding with (a) Dual Credit Course Funding. Language was added that states a Dual Credit Course, a course offered under an Early College Education Program (Early College High School), or a course offered under an Other Early College Program, may be submitted for funding under Texas Education Code, §61.059(p), or Chapter 13, Subchapter W of this title (relating to Community College Finance Program: Base and Performance Tier Methodology Beginning in Fiscal Year 2027) if the course is: (1) A course in the core curriculum; (2) A foreign language course; (3) A career and technical education course; (4) A course in a program of study; or (5) A course in a field of study. Language was added that permits an institution of higher education to submit a Dual Credit Course, a course offered under an Early College Education Program (Early College High School), or a course offered under an Other Early College Program, for funding under the FAST program of Chapter 13, Subchapter Q of this title (relating to Financial Aid for Swift Transfer (FAST) Program) only if the course meets all requirements of that subchapter. Language was added that permits a public junior college to report a course for funding for which a high school student may earn college credit that does not otherwise meet the requirements of this subchapter for the purpose of calculating base tier funding according to the provisions of Chapter 13, Subchapter W of title 19. Such a course is not considered a dual credit course under Title 19, Part 1. Language was added that indicates this subchapter does not prohibit an Early College High School under Texas Education Code, §28.908, from participating in or receiving funding under the FAST program of Chapter 13, Subchapter Q of Title 19. Language was added that permits an institution of higher education to waive all or part of tuition and fees for a Texas high school student enrolled in a course for which the student may receive dual credit.

Section 4.88, Effective Date, is established to provide an effective date.

Daniel R. Pérez, Associate Commissioner for Academic & Workforce Initiatives, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Daniel R. Pérez, Associate Commissioner for Academic & Workforce Initiatives, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be improving transparency and implementation of dual credit rules. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposed rules or information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research or analysis, may be submitted to Daniel R. Pérez, Associate Commissioner for Academic & Workforce Initiatives, P.O. Box 12788, Austin, Texas 78711-2788, or via email at AHAComments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments and new section is proposed under Texas Education Code, Section 28.009(b), which provides authority to the Coordinating Board to adopt rules on dual credit.

The proposed amendments and new section affects Texas Education Code, Sections 51.9675 and 28.009(b).

§4.81. Purpose.

This subchapter provides rules and regulations for public institutions of higher education to engage in dual credit partnerships with secondary schools, including dual credit partnerships that are eligible for participation in the Financial Aid for Swift Transfer (FAST) Program pursuant to Chapter [~~chapter~~] 13, Subchapter [~~subchapter~~] Q of this title (relating to Financial Aid for Swift Transfer (FAST) Program).

§4.82. Authority.

Education Code, §§28.009(b), 28.0095, 61.059(p), 130.001(b)(3) - (4) and 130.008, provide the Coordinating Board with the authority to regulate dual credit partnerships between public institutions of higher education and secondary schools with regard to lower division courses, and provide funding for dual credit courses, including courses offered for dual credit under the FAST program.

§4.83. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

[~~(1) Avocational Course--A course of study in a subject or activity that is usually engaged in by a person in addition to the person's regular work or profession for recreation or in relation to a hobby, including a community interest course, as defined in Education Code, §130.351(2).~~]

(1) [~~(2)~~] Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(2) Career and Technical Education Course--For the purposes of this subchapter includes a college-level course awarding semester credit hours and contained in the Workforce Education Course Manual (WECM).

[~~(3) Career and Technical Education Course--A workforce or continuing education college course offered by an institution of higher education for which a high school student may earn credit toward satisfaction of a requirement necessary to obtain an industry-recognized credential, certificate, or associate degree.~~]

[~~(A) A career and technical education course is listed in the Workforce Education Course Manual (WECM).~~]

[~~(B) For the purpose of this subchapter, this definition excludes:~~]

[~~*(i)* an avocational course;~~]

[~~*(ii)* a continuing education course that is ineligible for conversion as articulated college credit; and~~]

[~~*(iii)* a continuing education course that does not meet the institution's program or instructor accreditation standards.~~]

(3) [~~(4)~~] Certificate--A Certificate Program as defined in Education Code, §61.003(12).

(4) [~~(5)~~] College Board Advanced Placement (also referred to as Advanced Placement or AP)--An advanced academic high school course authorized by College Board potentially leading to college credit based on the student's score on the Advanced Placement exam. [~~College-level courses and exams available to secondary students under the auspices of an approved College Board program.~~]

(5) [~~(6)~~] Commissioner--The Commissioner of Higher Education.

(6) [~~(7)~~] Coordinating Board--The agency known as the Texas Higher Education Coordinating Board, including the agency staff.

(7) [~~(8)~~] Credit--College credit earned through the successful completion of a college career and technical education or academic course that fulfills specific requirements necessary to obtain an industry-recognized credential, certificate, associate degree, or other academic degree.

(8) [~~(9)~~] Degree-Seeking Student--A student who has filed a degree plan with an institution of higher education or is required to do so pursuant to Education Code, §51.9685.

(9) Dual Credit--A system under which an eligible high school student enrolls in college course(s) and receives credit for the course(s) from both the college and the high school.

(10) Dual Credit Course--

(A) A course for which a student earns joint high school and college credit at an institution of higher education under Education Code, §130.008 or §28.009, and is one of the following course types:

(i) a core curriculum course of the institution of higher education;

(ii) a career and technical education course;

(iii) a foreign language course.

(B) An Early College Education Program (Early College High School) or Other Early College Program may offer courses for dual credit that are not limited to courses prescribed in subparagraph (A) of this paragraph if the course assists a student in earning a Board-approved certificate or associate degree while in high school.

[~~(10) Dual Credit Course or Dual Enrollment Course--A course that meets the following requirements:~~]

[~~(A) The course is offered pursuant to an agreement under §4.84 of this subchapter (relating to Institutional Agreements).~~]

[~~(B) A course for which the student may earn one or more of the following types of credit:~~]

[~~*(i)* joint high school and junior college credit under Education Code, §130.008, or~~]

[~~*(ii)* another course offered by an institution of higher education, for which a high school student may earn semester credit hours or equivalent of semester credit hours toward satisfaction of:~~]

[~~*(I)* a course defined in paragraph (3) of this section that satisfies a requirement necessary to obtain an industry-recognized credential, certificate, or an associate degree;~~]

[~~*(II)* a foreign language requirement at an institution of higher education;~~]

[~~*(III)* a requirement in the core curriculum, as that term is defined by Education Code, §61.821, at an institution of higher education; or~~]

[~~*(IV)* a requirement in a field of study curriculum developed by the Coordinating Board under Education Code, §61.823.~~]

[~~(C) Dual credit includes a course for which a high school student may earn credit only at an institution of higher education (previously referred to as a dual enrollment course) if the course meets the requirements of this section.~~]

[~~(D) A student may earn a single grade toward both the college course and the high school credit or may earn two separate grades where the high school grade only reflects a student's mastery of secondary content.~~]

[~~(E) Dual credit and dual enrollment are synonymous in Title 19, Part 1 of these rules unless otherwise expressly provided by rule.~~]

[~~(F) Each dual credit course must meet the requirements of this subchapter.~~]

(11) Early College Education Program (Early College High School)--An early college education program as defined in, and meeting the requirements of, Texas Education Code, §29.908.

(12) Other Early College Program--An early college program developed via an institutional agreement in partnership between an institution of higher education and a high school or school district that offers a course or courses that assist a student in earning a Board-approved certificate or associate degree while in high school.

[~~(11) Equivalent of a Semester Credit Hour--A unit of measurement for a continuing education course, determined as a ratio of one continuing education unit to 10 contact hours of instruction. This may be expressed as a decimal of 1.6 continuing education units of instruction which equals one semester credit hour of instruction. In a continuing education course, not fewer than 16 contact hours are equivalent to one semester credit hour.~~]

(13) [~~(12)~~] Field of Study Curriculum (FOSC)--A Board-approved set of courses authorized under Subchapter B of this chapter (relating to Transfer of Credit, Core Curriculum and Field of Study Curricula) that satisfies lower-division requirements for a baccalaureate degree in a specific academic area at a general academic teaching institution. A field of study curriculum is designed to facilitate transfer of courses toward designated academic degree programs at public junior colleges, public technical institutes, or universities.

(14) [~~(13)~~] Home School--A private school that provides secondary education instruction in a bona fide manner from curriculum designed to meet basic education goals at or through a child's home by the parent or a person standing in parental authority.

(15) [~~(14)~~] Institution of Higher Education or Institution--A public institution of higher education as defined in Education Code, §61.003(8).

(16) [~~(15)~~] International Baccalaureate Diploma Program (also referred to as IB)--The curriculum and examinations leading to an International Baccalaureate diploma awarded by the International Baccalaureate Organization.

(17) [~~(16)~~] Locally Articulated College Credit--Credit earned through a high school course that fulfills specific requirements identified by a college for a career and technical education course and provides a pathway for high school students to earn credit toward a technical certificate or technical degree at a partnering institution of higher education upon high school graduation.

(18) [~~(17)~~] Program of Study Curriculum (POSC)--A block of courses which is designed to progress in content specificity for an industry or career cluster while also incorporating rigorous college and career readiness standards, authorized under Education Code, §61.8235. A POSC generally incorporates multiple entry and exit points for participating students with portable demonstrations of technical or career competency, including credit transfer agreements or industry-recognized credentials.

(19) [~~(18)~~] Public Two-Year College--Any public junior college, public technical institute, or public state college as defined in Education Code, §61.003.

(20) [~~(19)~~] School District--Under this subchapter, school district includes a charter school or district operating under Education Code, Chapter [~~chapter~~] 12, unless otherwise specified.

(21) [~~(20)~~] Semester Credit Hour--A unit of measure of instruction, represented in intended learning outcomes and verified by evidence of student achievement, that reasonably approximates one hour of classroom instruction or direct faculty instruction and a minimum of two hours out of class student work for each week over a 15-week pe-

riod in a semester system or the equivalent amount of work over a different amount of time. An institution is responsible for determining the appropriate number of semester credit hours awarded for its programs in accordance with federal definitions, requirements of the institution's accreditor, and commonly accepted practices in higher education.

§4.84. Institutional Agreements.

(a) Need for Institutional Agreements. For any dual credit partnership between a school district or private school and an institution, an agreement must be approved by the governing boards or designated authorities (e.g., superintendent or chief academic officer) of both the public school district or private secondary school, as applicable, and the institution prior to the offering of such courses. [~~Each institution shall report to the Coordinating Board a list of school districts and private schools with which it has agreements under this section, and the URL where these agreements are posted on the institution's Internet website.~~]

(b) Elements of Institutional Agreements. An Institutional Agreement entered into or renewed between an institution and a school district or private school, including a memorandum of understanding or articulation agreement, shall include the following elements:

(1) Eligible Courses;

(2) Student Eligibility;

(3) Location of Class;

(4) Student Composition of Class;

(5) Faculty Selection, Supervision, and Evaluation;

(6) Course Curriculum, Instruction, and Grading;

(7) Academic Policies and Student Support Services;

(8) Transcripting of Credit;

(9) Funding, including the sources of funding for courses offered under the program, including, at a minimum, the sources of funding for tuition, transportation, and any required fees, instructional materials, or textbooks for students participating in the program, including for students eligible to take dual credit courses at no cost to the student under the FAST program, under Texas Administrative Code, Chapter 13, Subchapter Q;

(10) All requirements for joint implementation of the FAST program under Education Code, §28.0095, including ensuring the accurate and timely exchange of information necessary for an eligible student to enroll at no cost in a dual credit course, for eligible public schools and students participating in the FAST program, under Texas Administrative Code, Chapter 13, Subchapter Q;

(11) Defined sequences of courses that apply to academic or career and technical education program requirements at the institution or industry-recognized credentials, where applicable;

(12) Specific program goals aligned with the statewide goals developed under Education Code, §§28.009(b-1)[~~, 130A.004, and 130A.101(c)(3)~~];

(13) Coordinated advising strategies and terminology related to dual credit and college readiness, including strategies to assist students in selecting courses that will satisfy applicable high school and college requirements for the student's intended program;

(14) Provision for the alignment of endorsements described by Education Code, §28.025(c-1), offered by the school district and dual credit courses offered under the agreement that apply toward those endorsements with postsecondary pathways and credentials at the institution and industry-recognized credentials;

(15) Identification of tools, including online resources developed by the Texas Education Agency, Coordinating Board, or the Texas Workforce Commission, to assist counselors, students, and families in selecting endorsements offered by the school district and college courses offered by the institution under the agreement;

(16) A procedure for establishing the course credits that may be earned under the agreement, including developing a course equivalency crosswalk or other method of identifying the number of high school and college credits that may be earned for each course completed through the program;

(17) A description of the academic supports and, if applicable, other support that will be provided to students participating in the program (e.g., transportation to and from a college campus);

(18) The respective roles and responsibilities of the institution of higher education and the school district or private school in providing the program and ensuring the quality of instruction and instructional rigor of the program;

(19) A requirement that the school district and the institution consider the use of free or low-cost open educational resources in courses offered under the program; and

(20) Designation of at least one employee of the school district or private school, or the institution as responsible for providing academic advising to a student who enrolls in a dual credit course under the program before the student begins the course.

(c) Each Agreement must be posted each year on the institution of higher education's and the school district's respective Internet websites.

(d) Institutional Agreements for Dual Credit Purposes Between Institutions and Home schools.

(1) An institution that has an institutional agreement with a public school district, charter school or private secondary school for the purpose of a dual credit partnership shall similarly accept or offer an institutional agreement with a home school.

(2) An institution may not, on the basis that a school is a home school, deny, delay, or obstruct the provision or execution of an institutional agreement with the home school, or impose additional criteria, conditions, or requirements pertaining to the institutional agreement that would not otherwise be applicable to institutional agreements with a public school district, charter school or private secondary school. Final decisions regarding such agreements remain at the discretion of the institution, provided it otherwise complies with the requirements of this section.

(3) For the purpose of approving, signing, and executing an institutional agreement between an institution and a home school, the institution shall recognize a home school as having equivalent approval and signatory authority to a private secondary school as described by subsection (a) of this section.

§4.85. Dual Credit Requirements.

(a) Eligible Courses.

(1) An institution may offer any dual credit course as defined in §4.83(10) [~~§4.83(11)~~] of this subchapter (relating to Definitions).

(2) A dual credit course offered by an institution must be in the approved undergraduate course inventory of the institution.

(3) An Early College High School may offer any dual credit course as defined in §4.83(10) [~~§4.83(11)~~] or Texas Education

Code, §28.009 and §130.008, subject to the provisions of Subchapter G of this chapter (relating to Early College High Schools).

(4) An institution may not offer a remedial or developmental education course for dual credit. This limitation does not prohibit an institution from offering a dual credit course that incorporates Non-Course-Based College Readiness content or other academic support designed to increase the likelihood of student success in the college course, including any course offered under §4.86 of this subchapter (relating to Optional Dual Credit Program: College Connect Courses).

(b) Student Eligibility for Dual Credit Course Enrollment.

(1) To enroll in a dual credit course, a student shall be a high school student who attends a public school, private school, parochial school, or a home school; and

[~~(1) A high school student is eligible to enroll in dual credit courses if the student:~~]

[~~(A) is not a degree-seeking student as defined in §4.83(10) of this subchapter (relating to Definitions);~~]

[~~(B) demonstrates that he or she is exempt under the provisions of the Texas Success Initiative as set forth in §4.54 of this chapter (relating to Exemption);~~]

[~~(C) demonstrates college readiness by achieving the minimum passing standards under the provisions of the Texas Success Initiative as set forth in §4.57 of this chapter (relating to Texas Success Initiative Assessment College Readiness Standards) on relevant section(s) of an assessment instrument approved by the Board as set forth in §4.56 of this chapter (relating to Assessment Instrument); or~~]

[~~(D) Meets the eligibility requirements for a Texas First Diploma under §21.52 of this title (relating to Eligibility for Texas First Diploma).~~]

(2) If the dual credit course does not require demonstration of Texas Success Initiative college readiness (i.e. is not TSI-liable), or the course is part of a Level 1 workforce education certificate, a student shall not be required to meet eligibility requirements prescribed in paragraph (3) of this subsection.

[~~(2) A student who is enrolled in private or non-accredited secondary schools or who is home-schooled must satisfy paragraph (b)(1) of this subsection.~~]

(3) If the dual credit course:

(A) is an academic course; or

(B) is a workforce education course that is part of a Level 2 workforce education certificate or an applied associate degree; and

(C) requires demonstration of Texas Success Initiative college readiness; a student shall:

(i) Demonstrate that they are exempt under the provisions of the Texas Success Initiative as set forth in §4.54 of this chapter (relating to Exemption);

(ii) Demonstrate college readiness by achieving the minimum passing standards under the provisions of the Texas Success Initiative as set forth in §4.57 of this chapter (relating to Texas Success Initiative Assessment College Readiness Standards) on relevant section(s) of an assessment instrument approved by the Board as set forth in §4.56 of this chapter (relating to Texas Success Initiative Assessment Instrument);

(iii) Meet the eligibility requirements for a Texas First Diploma under §4.402 of this chapter (relating to Eligibility for Texas First Diploma); or

(iv) Achieve the following scores relevant to the Texas Success Initiative eligibility requirements of the course:

(I) State of Texas Assessment of Academic Readiness End of Course (STAAR EOC)

(-a-) a minimum score of 4000 on the English II STAAR EOC; and/or

(-b-) a minimum score of 4000 on the Algebra I STAAR EOC and passing grade in the Algebra II course;

(II) Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT)

(-a-) a score of 460 on the evidence-based reading and writing (EBRW) test; and/or

(-b-) a score of 510 on the mathematics test;

(III) PreACT

(-a-) a combined score of 40 on the English and Reading (E+R) tests; and/or

(-b-) score of 22 on the mathematics test.

[~~(3) An institution may require a student who seeks to enroll in a dual credit course to meet all the institution's regular prerequisite requirements designated for that course (e.g., a minimum score on a specified placement test, minimum grade in a specified previous course, etc.).~~]

(4) In admitting or enrolling students in a dual credit course, an institution shall apply the same enrollment and admission criteria and conditions for a high school student who attends a public, private, parochial, or home school, in accordance with Texas Education Code, §51.9675 (Equal Access to Dual Credit Courses).

[~~(4) An institution may impose additional requirements for enrollment in specific dual credit courses that do not conflict with this subchapter.~~]

(5) An institution is not required, under the provisions of this section, to offer dual credit courses for high school students.

[~~(5) An institution is not required, under the provisions of this section, to offer dual credit courses for high school students.~~]

(c) Location of Class. An institution may teach dual credit courses on the college or university campus or on the high school campus.

(1) For dual credit courses taught exclusively to high school students on the high school campus and for dual credit courses taught via distance education, the institution shall comply with Chapter 2, Subchapter J, of this title (relating to Approval of Distance Education for Public Institutions).

(2) An institution may offer the same dual credit course to a high school student who attends a public, private, parochial, or home school, through an alternate delivery method (e.g., distance education, asynchronous online, or hybrid format) if the existing method is not reasonably accessible to that student.

(3) An institution is not required to create an additional section of the same course in another format or location (e.g., on campus, distance education, asynchronous online, or hybrid) to serve high school students.

(d) Composition of Class. A dual credit course may be composed of dual credit students only or of a mixture of dual credit and college students. Notwithstanding the requirements of subsection (e) of this section, exceptions for a mixed class that combines dual credit students and high school credit-only students may be allowed when the creation of a high school credit-only class is not financially viable for the high school and only under one of the following conditions:

(1) If the course involved is required for completion under the State Board of Education High School Program graduation requirements;

(2) If the high school credit-only students are College Board Advanced Placement or International Baccalaureate students; or

(3) If the course is a career and technical education course and the high school credit-only students are eligible to earn articulated college credit.

(e) Faculty Selection, Supervision, and Evaluation. Each institution shall apply the standards for selection, supervision, and evaluation for instructors of dual credit courses as required by the institution's accreditor. A high school teacher may only teach a high school course offered through a dual credit agreement if the teacher is approved by the institution offering the dual credit course.

(f) Course Curriculum, Instruction, and Grading. The institution shall ensure that a dual credit course offered at a high school is at least equivalent in quality to the corresponding course offered at the main campus of the institution with respect to academic rigor, curriculum, materials, instruction, and methods of student evaluation. These standards must be upheld regardless of the student composition of the class, location, and mode of delivery.

(g) Academic Policies and Student Support Services.

(1) Regular academic policies applicable to courses taught at an institution's main campus must also apply to dual credit courses. These policies may include the appeal process for disputed grades, drop policy, the communication of grading policy to students, when the syllabus must be distributed, etc. Additionally, each institution is strongly encouraged to provide maximum flexibility to high school students in dual credit courses, consistent with the institution's academic policies, especially with regard to drop policies, to encourage students to attempt rigorous courses without potential long-term adverse impacts on students' academic records.

(2) Each student in a dual credit course must be eligible to utilize support services that are appropriate for dual credit students. The institution is responsible for ensuring timely and efficient access to such services (e.g., academic advising and counseling), to learning materials (e.g., library resources), and to other benefits for which the student may be eligible.

(3) A student enrolled in a dual credit course at an institution shall file a degree plan with the institution as prescribed by Texas Education Code, §51.9685.

(h) Transcripting of Credit. Each institution or high school shall immediately transcript the credit earned by a student upon a student's completion of the performance required in the course.

§4.86. Optional Dual Credit or Dual Enrollment Program: College Connect Courses.

(a) Authority. These rules are authorized by Texas Education Code, §§28.009(b), 28.0095, 130.001(b)(3) - (4), and 130.008.

(b) Purpose. The purpose of this rule is to encourage and authorize public institutions of higher education to deliver innovatively designed dual credit courses that integrate both college-level content in the core curriculum of the institution alongside college-readiness content and skills instruction. These innovatively designed courses will allow students the maximum flexibility to obtain college credit and provide integrated college readiness skills to students who are on the continuum of college readiness and will benefit from exposure to college-level content.

(c) Student eligibility. An eligible student must be enrolled in a public school district or open-enrollment charter as defined in Texas Education Code, §5.001(6), and meet the requirements of §4.85(b) of this subchapter (relating to Dual Credit Requirements). Notwithstanding §4.85(b), an institution may enroll a high school student who is not exempt or college ready under the requirements of §4.54 or §4.57 of this chapter (relating to Exemptions, and Texas Success Initiative Assessment College Readiness Standards [~~Exceptions, and Waivers and College Ready Standards~~], respectively) in a math or communications College Connect Course offered by the institution.

(d) Course content. The following standards apply to delivery of College Connect Courses offered under this rule:

(1) An institution may only offer College Connect Courses within the institution's core curriculum in accordance with §4.28 of this chapter (relating to Core Curriculum).

(2) An institution shall also incorporate supplemental college readiness content to support students who have not [~~yet~~] demonstrated college readiness, as defined in §4.57, within these courses. The supplemental college readiness content shall be related to and integrated with the subject matter of the course. An institution may deliver this supplemental instruction through a method at their discretion, including through embedded course content, supplemental coursework, or other methods.

(e) The Coordinating Board may provide technical assistance to an institution of higher education or school district in developing and providing these courses.

(f) Additional Academic Policies.

(1) College Connect Courses offered through dual credit must confer both a college-level grade and a secondary-level grade upon a student's successful completion of the course. A grade conferred for the college-level course may be different from the secondary-level grade, to reflect whether a student has appropriately demonstrated college-level knowledge and skills as well as secondary-level knowledge and skills. An institution may determine how a student enrolled in this course may earn college credit, whether through college-level course completion or successful completion of a recognized college-level assessment that the institution would otherwise use to award college credit.

(2) An institution must enter into an institutional agreement with the secondary school according to §4.84 of this subchapter (relating to Institutional Agreements) to offer College Connect Courses.

[~~(3) An institution is strongly encouraged to provide the maximum latitude possible for a student to withdraw from the college-level course component beyond the census date, while still giving the student an opportunity to earn credit toward high school graduation requirements, in accordance with §4.85(g) of this subchapter (relating to Dual Credit Requirements).~~]

(3) [~~(4)~~] Hours earned through this program before the student graduates from high school that are used to satisfy high school graduation requirements do not count against the limitation on formula funding for excess semester credit hours under §13.104 of this title (relating to Exemptions for Excess Hours).

(g) Funding and Tuition. The Coordinating Board shall fund College Connect Courses in accordance with §4.87 of this subchapter (relating to Dual Credit Course Funding).

§4.87. Dual Credit Course Funding.

(a) A Dual Credit Course, a course offered under an Early College Education Program (Early College High School), or a course offered under an Other Early College Program, may be submitted for funding under Texas Education Code, 61.059(p), or Chapter 13, Subchapter W of this title (relating to Community College Finance Program: Base and Performance Tier Methodology Beginning in Fiscal Year 2027) if the course is one of the following:

(1) A course in the core curriculum;

(2) A foreign language course;

(3) A career and technical education course;

(4) A course in a program of study; or

(5) A course in a field of study.

[~~(a) A public junior college may submit for funding any course that meets the requirements of this subchapter as provided in chapter 13, subchapter S of this title (relating to Community College Finance Program), or chapter 13, subchapter P of this title (relating to Community College Finance Program for Fiscal Year 2024).~~]

(b) An institution may submit a Dual Credit Course, a course offered under an Early College Education Program (Early College High School), or a course offered under an Other Early College Program, for funding under the FAST program of Chapter 13, Subchapter Q of this title (relating to Financial Aid for Swift Transfer (FAST) Program) only if the course meets all requirements of that subchapter.

[~~(b) A public junior college may report a course for funding for which a high school student may earn college credit that does not otherwise meet the requirements of this subchapter for the purpose of calculating base tier funding according to the provisions of chapter 13, subchapter S or subchapter P of this title. Such a course is not considered a dual credit or dual enrollment course under Title 19, Part 1.~~]

(c) A public junior college may report a course for funding for which a high school student may earn college credit that does not otherwise meet the requirements of this subchapter for the purpose of calculating base tier funding according to the provisions of Chapter 13, Subchapter W of this title. Such a course is not considered a dual credit course under Title 19, Part 1.

[~~(c) An institution may submit a dual credit course for funding under the FAST program of chapter 13, subchapter Q of this title (relating to Financial Aid for Swift Transfer (FAST) Program) only if the course meets all requirements of that subchapter.~~]

(d) Nothing in this subchapter shall be construed to prohibit an Early College High School under Texas Education Code, §28.908, from participating in or receiving funding under the FAST program of Chapter 13, Subchapter Q of this title.

[~~(d) Nothing in this subchapter shall be construed to prohibit an Early College High School under Texas Education Code, §28.908, from participating in or receiving funding under the FAST program of chapter 13, subchapter Q of this title.~~]

(e) An institution may waive all or part of tuition and fees for a Texas high school student enrolled in a course for which the student may receive dual credit.

[~~(e) An institution may waive all or part of tuition and fees for a Texas high school student enrolled in a course for which the student may receive dual course credit.~~]

§4.88. Effective Date.

This subchapter is effective for enrollments in courses offered beginning with the fall 2027 semester.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2026.

TRD-202603060
Douglas Brock
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: September 6, 2026
For further information, please call: (512) 427-6299

♦ ♦ ♦

CHAPTER 7. DEGREE GRANTING COLLEGES AND UNIVERSITIES OTHER THAN TEXAS PUBLIC INSTITUTIONS

The Texas Higher Education Coordinating Board (Coordinating Board) proposes the repeal of Texas Administrative Code, Title 19, Part 1, Chapter 7, Subchapter A, §§7.1 - 7.16, General Provisions; and Subchapter B, §§7.50 - 7.57, Approval for Participation in the State Authorization Reciprocity Agreement (SARA) for Private or Independent Institutions of Higher Education and Private Postsecondary Educational Institutions. Specifically, Chapter 7 is being repealed and replaced with new Chapter 7 rules for clarity.

Texas Education Code, Chapter 61, Subchapter G, §§61.301 - 61.321 and Subchapter H, §§61.401 - 61.405, authorizes the Coordinating Board to regulate the awarding or offering of degrees, awarding or offering credit toward degrees, and use of certain academic terms by private postsecondary educational institutions and out-of-state public postsecondary educational institutions, Chapter 132, relating to career schools and colleges, and Texas Education Code, §61.05121, authorizes the Coordinating Board to administer state participation in State Authorization Reciprocity Agreements.

The Coordinating Board proposes the repeal of Chapter 7 as part of an effort to update agency rules. These new subchapters in Chapter 7 represent a structural overhaul of the private postsecondary rules designed to provide clarity for institutions by dividing key topic areas into separate subchapters to ensure the rules are clearly aligned with current practice and statutory authority.

Daniel R. Pérez, Associate Commissioner for Academic & Workforce Initiatives, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Daniel R. Pérez, Associate Commissioner for Academic & Workforce Initiatives, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as the result of adopting these rules will be providing clarity for institutions by dividing key topic areas into separate subchapters and ensuring that the rules are clearly aligned with current practice and statutory authority. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposed rules or information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research or analysis, may be submitted to Daniel R. Pérez, Associate Commissioner for Academic & Workforce Initiatives, P.O. Box 12788, Austin, Texas 78711-2788, or via email at AHAComments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§7.1 - 7.16

The repeal is proposed under Texas Education Code, Chapter 61, Subchapter G, §§61.301 - 61.321 and Subchapter H, §§61.401 - 61.405, which authorizes the Coordinating Board to regulate the awarding or offering of degrees, awarding or offering credit toward degrees, and use of certain academic terms by private postsecondary educational institutions and out-of-state public postsecondary educational institutions, and Chapter 132, relating to career schools and colleges.

The proposed repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 7, Subchapter A, §§7.1 - 7.16.

§7.1. Purpose.

§7.2. Authority.

§7.3. Definitions.

§7.4. Standards for Operation of Institutions.

§7.5. Administrative Injunctions, Limitations, and Penalties.

§7.6. Recognition of Accrediting Agencies.

§7.7. Institutions Accredited by Board-Recognized Accreditors.

§7.8. Institutions Not Accredited by a Board-Recognized Accreditor.

§7.9. Religious Institutions Offering Degrees in Religious Disciplines.

§7.10. Registration of Agents.

§7.11. Changes of Ownership and Other Substantive Changes.

§7.12. Review and Use of Degrees from Institutions Not Eligible for Certificates of Authority.

§7.13. Student Data Reporting.

§7.14. Distance Education Approval Processes for Degree Granting Colleges and Universities Other Than Texas Public Institutions.

§7.15. Academic Records Maintenance, Protection, and Repository of Last Resort.

§7.16. Financial Protections for Student Tuition and Fees.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2026.

TRD-202603062
Douglas Brock
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: September 6, 2026
For further information, please call: (512) 427-6299

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SUBCHAPTER B. APPROVAL FOR PARTICIPATION IN THE STATE AUTHORIZATION RECIPROCITY AGREEMENT (SARA) FOR PRIVATE OR INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION AND PRIVATE POSTSECONDARY EDUCATIONAL INSTITUTIONS

19 TAC §§7.50 - 7.57

The repeal is proposed under Texas Education Code, §61.05121, which authorizes the Coordinating Board to administer state participation in State Authorization Reciprocity Agreements.

The proposed repeal affects Texas Administrative Code, Title 19, Part 1, Chapter 7, Subchapter B, §§7.50 - 7.57.

§7.50. Purpose.

§7.51. Authority.

§7.52. Definitions.

§7.53. Eligibility Criteria.

§7.54. Admission to SARA.

§7.55. Maintaining Eligibility.

§7.56. Complaint Resolution.

§7.57. Out-of-state SARA Participants.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2026.

TRD-202603063
Douglas Brock
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: September 6, 2026
For further information, please call: (512) 427-6299

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SUBCHAPTER A. GENERAL PROVISIONS

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 7, Subchapter A, §§7.1 - 7.3, General Provisions; Subchapter B, §§7.13 - 7.25, Standards for Operation of

Postsecondary Educational Institutions; Subchapter C, §§7.36 - 7.39, Recognition of Institutional Accrediting Agencies; Subchapter D, §§7.50 - 7.53, Certificate of Agent Registration; Subchapter E, §§7.65 - 7.74, Authorization of Accredited Institutions; Subchapter F, §§7.83 - 7.98, Requirements for Application, Renewal, and Amendments to a Provisional Certificate to Operate; Subchapter G, §§7.108 - 7.113, Requirements for Discontinuation or Revocation of a Provisional Certificate to Operate; Subchapter H, §§7.121 - 7.125, Review and Use of Degrees from Institutions Not Eligible for a Provisional Certificate to Operate; Subchapter I, §§7.135 - 7.137, Change of Ownership or Control and Other Substantive Changes; Subchapter J, §§7.148 - 7.151, Closure of a Private Postsecondary Educational Institution; Subchapter K, §§7.163 - 7.169, Administrative Injunctions, Limitations, and Penalties; Subchapter L, §§7.180 - 7.185, Student Data and Protections; Subchapter M, §§7.196 - 7.199, Distance Education Approval for Degree-granting Educational Institutions Outside of Texas; Subchapter N, §§7.210 - 7.217, Participation in the State Authorization Reciprocity Agreement (SARA). Specifically, these new subchapters in Chapter 7 represent a structural overhaul of the private postsecondary rules designed to provide clarity for institutions by dividing key topic areas into separate subchapters and ensuring that the rules are clearly aligned with current practice and statutory authority.

The Coordinating Board is required to promulgate this chapter under Texas Education Code (TEC), Chapter 61, Subchapter G (§§61.301 - 61.321), which governs the regulation of private postsecondary educational institutions and public out-of-state postsecondary institutions operating in Texas, TEC, Subchapter B (§61.026), related to advisory committees, TEC, Subchapter G (§61.314), relating to an advisory council on private postsecondary educational institutions, TEC, Subchapter H (§§61.401 - 61.405), relating to the regulation of academic terminology, and TEC, Chapter 132, which pertains to career schools and colleges.

Subchapter A. General Provisions (§§7.1 - 7.3)

Section 7.1, Authority and Purpose, identifies the relevant statutes that govern the regulation of private postsecondary institutions and defines that the purpose of the chapter is to establish the standards and procedures to which these institutions must adhere.

Section 7.2, Definitions, establishes definitions for key terms relevant to the chapter.

Section 7.3, Non-Oversight of Religious Instruction Degrees, clarifies that institutions providing religious instruction only are exempt from the requirements of this chapter.

Subchapter B. Standards for Operation of Postsecondary Educational Institutions (§§7.13 - 7.25)

Section 7.13, Purpose and Applicability, defines the purpose of the standards and identifies the institutions that are required to meet the requirements of the subchapter.

Section 7.14, Standard I-Legal Compliance, defines that institutions are required to follow all applicable federal, state, and local laws, as well as any regulations and ordinances for operation of an institution and business in Texas.

Section 7.15, Standard II-Institutional Structure and Administration, specifies the requirements each institution must meet to have the appropriate administrative structure that supports its mission, ensures accountability, and protects the interests of students, faculty, and staff.

Section 7.16, Standard III-Financial Resources and Records, specifies the requirements each institution must meet to ensure adequate financial resources and financial stability to provide education of good quality and to fulfill its commitments to students.

Section 7.17, Standard IV-Faculty Resources, specifies the requirements each institution must meet to ensure it has the necessary faculty resources to deliver an education that ensures student success and that is consistent with the objectives of each course and degree program offered.

Section 7.18, Standard V-Facilities, specifies the requirements each institution must meet to ensure it has adequate space, equipment, and instructional materials to provide education of good quality.

Section 7.19, Standard VI-Student Support, specifies the requirements each institution must meet to ensure it has student support services that ensure student success during enrollment at the institution and after graduation.

Section 7.20, Standard VII-Student Rights and Responsibilities, specifies the requirements each institution must meet to ensure it adheres to, and makes publicly available, clear policies on student conduct, due process, and grievance procedures, including student grievance procedures.

Section 7.21, Standard VIII-Curriculum, specifies the requirements each institution must meet to ensure that for each degree program proposed, the institution has clearly structured and academically rigorous program that aligns with the institution's mission and learning objectives.

Section 7.22, Standard IX-Learning Resources, specifies the requirements each institution must meet to ensure the institution provides access for faculty and students to current, organized, inventoried, and discipline-appropriate learning materials, instructional support, online learning resources and policies, and learning management systems.

Section 7.23, Standard X-Learning Outcomes and Program Assessment, specifies the requirements each institution must meet to ensure it has defined and appropriate learning outcomes and methods for assessing success in its degree programs.

Section 7.24, Standard XI-Institutional Assessment, specifies the requirements each institution must meet to ensure ongoing institutional assessment to improve academic programs, administration, finances, student services, facilities, and other operations.

Section 7.25, Standard XII-Policies, Procedures and Publications, specifies the requirements each institution must meet to maintain appropriate, publicly available, up-to-date policies, procedures, and publications for the fair and transparent operation of the institution.

Subchapter C. Recognition of Institutional Accrediting Agencies (§§7.36 - 7.39)

Section 7.36, Eligibility Criteria for Institutional Accrediting Agency Recognition, establishes criteria that accrediting agencies must meet in order to be recognized by the Coordinating Board.

Section 7.37, Application for Accrediting Agency Recognition, establishes the process for accreditors to submit an application to the Coordinating Board for recognition as an accrediting agency.

Section 7.38, Maintenance of Accrediting Agency Recognition, establishes the steps an accrediting agency must take in order to maintain Board-recognition.

Section 7.39, Denial or Withdrawal of Board-Recognition, establishes the criteria and steps for a withdrawal of Board approval.

Subchapter D. Certificate of Agent Registration (§§7.50 - 7.53)

Section 7.50, Activities Requiring a Certificate of Agent Registration, specifies the conditions under which an individual must register with the Coordinating Board as an agent.

Section 7.51, Required Application for a Certificate of Agent Registration, identifies the steps required to apply for a Certificate of Agent Registration.

Section 7.52, Reapplication for a Certificate of Agent Registration, specifies the time frames required for reapplication of the Certificate.

Section 7.53, Revocation of a Certificate of Agent Registration, outlines the criteria for revocation and the steps taken upon revocation.

Subchapter E. Authorization of Accredited Institutions (§§7.65 - 7.74)

Section 7.65, Requirement to Apply for Accredited Institution Authorization, identifies the entities which are required to apply for a Certificate of Authorization and limitations on applications.

Section 7.66, Application for a Certificate of Authorization, sets forth the scope of the application and the information which must be included in the application.

Section 7.67, Board Review and Issuance of Certificate of Authorization, provides the process for review and issuance of a Certificate of Authorization.

Section 7.68, Annual Compliance Review of Certificates of Authorization, provides information which must be submitted to ensure an institution has continued compliance with the requirements for a Certificate of Authorization. The annual compliance reports are divided by institution name and presented over two board meetings to allow sufficient time for timely review.

Section 7.69, Changes During Operation under a Certificate of Authorization, provides a time requirement for reporting changes while operating under a Certificate of Authorization. These changes may require issuance of a revised Certificate of Authorization after review by the Coordinating Board.

Section 7.70, Certificates of Authorization Expiration and Renewal, provides length of time a Certificate of Authorization will be valid and the process to request renewal of the Certificate of Authorization.

Section 7.71, Criteria for Initiating Revocation Procedures for a Certificate of Authorization, identifies the conditions under which the Coordinating Board has authority to initiate revocation procedures for an institution's Certificate of Authorization.

Section 7.72, Revocation Procedures for a Certificate of Authorization, provides the process for notification of the revocation procedures and steps for institutional request for review and appeal of revocation decision.

Section 7.73. Temporary Provisional Certificate to Operate, establishes criteria under which the Commissioner may transition an institution to a temporary Provisional Certificate to Operate and procedures required for the transition.

Section 7.74, Placing Conditions on a Certificate of Authorization, establishes procedures by for institutional notifications and procedures for the institution request a review or appeal of the conditions.

Subchapter F. Requirements for Application, Renewal, and Amendments to a Provisional Certificate to Operate (§§7.83 - 7.98)

Section 7.83, Purpose and Applicability, establishes that the subchapter is to outline the requirements for a Provisional Certificate to Operate and applies to non-accredited institutions that meet certain criteria.

Section 7.84, Restrictions on Professional Degrees, outlines the statutory limitations for professional degrees for institutions operating under a Provisional Certificate to Operate.

Section 7.85, Application for a Provisional Certificate to Operate, outlines the application requirements that institutions must meet.

Section 7.86, Required Fees, outlines requirements related to fees associated with initial applications, renewals, and amendments to Provisional Certificates to Operate.

Section 7.87, Required Desk Review, outlines the requirements for a desk review related to a Provisional Certificate to Operate and the potential outcomes associated with a desk review.

Section 7.88, Required Site Visit and Site Visit Team, outlines the requirements for a site visit related to a Provisional Certificate to Operate and the potential outcomes associated with a site visit.

Section 7.89, Site Visit Team Assessment, outlines the possible ratings an institution can receive for its initial application on each Standard for Operation in Subchapter B, and the outcomes associated with each rating.

Section 7.90, Ratings Required for the Renewal of a Provisional Certificate to Operate, outlines the possible ratings an institution can receive on its renewal application for each Standard for Operation in Subchapter B, and the outcomes associated with each rating.

Section 7.91, Site Visit Report and Applicant Response, outlines the steps required to prepare and submit a site visit report and the process to submit an institutional response.

Section 7.92, Recommendation to the Commissioner and Board, outlines the steps required for Coordinating Board staff to submit a recommendation to the Commissioner and the expectation for the Commissioner's review.

Section 7.93, Board Review and Issuance of Provisional Certificate to Operate, outlines the steps required for Board decision regarding a Provisional Certificate to Operate and the outcomes associated with a Board decision.

Section 7.94, Required Notices, Reporting and Record-keeping, establishes requirements limitations and requirements for institutions operating under a Provisional Certificate to Operate.

Section 7.95, Representing Transferability of Credit with Provisional Certificate to Operate, establishes limitations on how institutions may enroll students in courses designed to transfer to another institution.

Section 7.96, Amendments to a Provisional Certificate to Operate, establishes limitations and requirements for submitting an amendment to a Provisional Certificate to Operate.

Section 7.97, Renewal of a Provisional Certificate to Operate, outlines the steps required for a Board decision regarding an application to renew a Provisional Certificate to Operate.

Section 7.98, Right to Request Hearing, summarizes the right of the institution to appeal a decision regarding a Provisional Certificate to Operate.

Subchapter G. Requirements for Discontinuation or Revocation of a Provisional Certificate to Operate (§§7.108 - 7.113)

Section 7.108, Purpose and Applicability, establishes requirements for discontinuation or revocation of a Provisional Certificate to Operate.

Section 7.109, Discontinuing a Degree Program While Under a Provisional Certificate to Operate, outlines the steps an institution must take when discontinuing a degree program.

Section 7.110, Revocation of Provisional Certificate to Operate, outlines the circumstances under which the Board may revoke a Provisional Certificate to Operate and the requirements of that institution after revocation.

Section 7.111, Cessation of Operation and Teach-Out Agreements after Revocation of a Provisional Certificate to Operate, outlines the steps an institution must take once it receives notice of Board revocation.

Section 7.112, Requirements for Teach-Out Agreements, establishes requirements that institutions must follow when developing teach-out agreements during closure, revocation or discontinuation.

Section 7.113, Reapplication after Revocation of Provisional Certificate to Operate, outlines the limitations for an institution to reapply for a Provisional Certificate to Operate after revocation, and defines the additional review criteria an institution must meet.

Subchapter H. Review and Use of Degrees from Institutions Not Eligible for a Provisional Certificate to Operate (§§7.121 - 7.125)

Section 7.121, Entities Which May Have Degrees Eligible for Review, lists qualifications of entities for which the Coordinating Board may undertake a review of its degrees.

Section 7.122, Persons Who May Request Review of a Degree from an Institution Which is Not Eligible for a Provisional Certificate to Operate a Non-accredited institution, allows a person who holds a degree from a described entity to request review of the person's degree.

Section 7.123, Review of a Degree from an Entity Which is Not Eligible for a Provisional Certificate to Operate, describes the standards for determining equivalency of a degree.

Section 7.124, Recommendation to the Commissioner, provides the process for submitting the reviewer report to the Commissioner for final determination of equivalency of the degree.

Section 7.125, Fees for Review of a Degree, states the basis for the fee.

Subchapter I. Change of Ownership or Control and Other Substantive Changes (§§7.135 - 7.137)

Section 7.135, Change in Ownership or Control, provides the activities considered changes of ownership, changes of control, and other substantive changes administered under this subchapter.

Section 7.136, Requirements to Maintain Authorization to Operate during a Change in Ownership, provides requirements that must be following to maintain a Certificate of Authorization or Provisional Certificate to Operate.

Section 7.137, Other Substantive Changes, lists notifications that are expected from the private postsecondary educational institution's Single Point of Contact throughout the period when an institution holds a Certificate of Authorization or a Provisional Certificate to Operate.

Subchapter J. Closure of a Private Postsecondary Educational Institution (§§7.148 - 7.151)

Section 7.148, Notification of Closure, requires prior notification to the Coordinating Board prior to closure or immediately if the closure is unexpected.

Section 7.149, Withdrawal of Authority to Operate Upon Closure, verifies that authorization to operate ends upon closure. The section allows the Assistant Commissioner who has oversight of the closing institution to approve closure plans and teach-out agreements.

Section 7.150, Requirements for a Closing Private Postsecondary Educational Institution to Protect Students, ensures the students of a closing institution can complete their education.

Section 7.151, Limited Authorization to Teach Out Students of a Closed Private Postsecondary Education Institution, provides parameters under which limited authorization may be given to teach out students when the teach-out institution is not currently authorized to offer the closing degree programs.

Subchapter K. Administrative Injunctions, Limitations, and Penalties (§§7.163 - 7.169)

Section 7.163, Prohibited Conduct, limits the activities a person or institution may engage in unless authorized by the Coordinating Board.

Section 7,164, Publication of Authorized and Unauthorized Degrees, describes the information the Board will publish regarding accreditation and authorization of private postsecondary educational institutions.

Section 7.165, Limitations on Educational Institutions, includes specific limitations for activities on federal land and the use of Associate of Occupational Studies degrees.

Section 7,166, Criminal Offenses, cites Texas Code under which criminal offenses may be found.

Section 7.167, Administrative and Civil Penalties, details penalties the Commissioner may impose and request to the Texas Attorney General to initiate civil proceedings.

Section 7.168, Other Legal Remedies, cites Texas Code under which other legal remedies may be pursued and references of violations to the Texas Attorney General.

Section 7.169, Process for Notice and Appeal of Penalty Assessment, provides the process to notify a person or institution of any violation, penalty, or right to a hearing. The section provides the deadlines for responses.

Subchapter L. Student Data and Protections (§§7.180 - 7.185)

Section 7.180, Student Data Reporting, requires institutions to submit annual student data to the Coordinating Board.

Section 7.181, Academic Records Maintenance and Protection, states the requirements for maintaining student academic records, the format of such records, and protection of student personally identifiable information.

Section 7.182, Academic Records Management Upon Private Postsecondary Institution Closure, provides the timeline for securing and submitting student records upon closure. The section provides requirements for transferring student records to third parties and the ability for the Commissioner to seek court authority to take possession of such records.

Section 7.183, Closed Institution Records Repository of Last Resort, identifies the Coordinating Board as the repository of last resort, documentation that will be provided to students of closed institutions, and the ability to utilize a third party as the custodian of record to fulfill transcript requests.

Section 7.184, Financial Protections for Student Tuition and Fees, sets forth the financial protections that must be maintained to ensure students, parents or guardians, or another entity paying tuition and fees on behalf of students, are reimbursed for unearned tuition and fees.

Section 7.185, Student Tuition and Fee Recovery Process, provides the process to recover unearned tuition and fees. The section defines a qualifying event which triggers the process.

Subchapter M. Distance Education Approval for Degree-granting Educational Institutions (§§7.196 - 7.199)

Section 7.196, Applicability of Distance Education Exemption to Institution Outside of Texas, identifies the institutions which may be exempt when offering distance education to Texas residents.

Section 7.197, Distance Education Exemption for Institution Outside of Texas, provides the scope of the exemption and limitations to the exemption.

Section 7.198, Inapplicability of Distance Education Exemption, identifies institutions for which the distance education exemption does not apply.

Section 7.199, Principles of Best Practice for Distance Education, lists best practices all institutions offering distance education must follow.

Subchapter N. Participation in the State Authorization Reciprocity Agreement (SARA) (§§7.210 - 7.217)

Section 7.210, Purpose and Applicability, defines the Coordinating Board's role in overseeing private institutions that participate in State Authorization Reciprocity Agreements (SARA).

Section 7.211, Authority, authorizes the Coordinating Board as the SARA State Portal Entity (SPE) to manage the state's and state private institutions' participation in SARA.

Section 7.212, Eligibility Criteria, provides location and accreditation requirements to participate in SARA.

Section 7.213, Admission to SARA, lists application requirements and fees, the review process, and information institutions are required to submit or agree to follow.

Section 7.214, Denial for SARA Participation, describes the denial and appeal process.

Section 7.215, Maintaining SARA Participation Eligibility, provides steps an institution must take to remain eligible to participate in SARA. Institutions may be removed for violation of SARA standards or requirements.

Section 7.216, Complaint Resolution, lists information institutions must include in a complaint resolution policy related to student complaints regarding violation of SARA policy. The section provides the process for Coordinating Board SPE staff to review and resolve appeals of an institution's resolution of a student complaint.

Section 7.217, Out-of-State SARA Participants, states that Coordinating Board SPE staff are the primary point of contact for out-of-state SARA participants. The section provides violations under which the Coordinating Board may take appropriate action against an out-of-state SARA participating institution.

Brandon Griggs, Assistant Commissioner for Academic & Health Affairs, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Brandon Griggs, Assistant Commissioner for Academic & Health Affairs, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the improved rule clarity and navigability through consolidation of rules for similar programs. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rules; and

(8) the rules will not affect this state's economy.

Comments on the proposed rules or information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research or analysis, may be submitted to Daniel R. Pérez, Associate Commissioner for Academic & Workforce Initiatives, P.O. Box 12788, Austin, Texas 78711-2788, or via email at AHAComments@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

19 TAC §§7.1 - 7.3

The new sections are proposed under Texas Education Code, Chapter 61, Subchapter G (§§61.301 - 61.321), which governs the regulation of private postsecondary educational institutions and public out-of-state postsecondary institutions operating in Texas. This includes Subchapter B (§61.026), related to advisory committees, Subchapter G (§61.314), relating to an advisory council on private postsecondary educational institutions, Subchapter H (§§61.401 - 61.405), relating to the regulation of academic terminology, and Texas Education Code, Chapter 132, which pertains to career schools and colleges.

The proposed new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 7.

§7.1. Authority and Purpose.

(a) Authority. This Chapter is adopted under the authority of the Texas Education Code, Chapter 61, Subchapter G (§§61.301 - 61.321), which governs the regulation of private postsecondary educational institutions and public out-of-state postsecondary institutions operating in Texas. These rules also reference Texas Education Code, Subchapter B (§61.026), related to advisory committees, Texas Education Code, Subchapter G (§61.314), relating to an advisory council on private postsecondary educational institutions, Texas Education Code, Subchapter H (§§61.401 - 61.405), relating to the regulation of academic terminology, and Texas Education Code, Chapter 132, which pertains to career schools and colleges. The Board is authorized to enforce these provisions to ensure the integrity of degree offerings and the appropriate use of academic terms within the state.

(b) Purpose. This chapter establishes the standards and procedures by which private postsecondary institutions and public out-of-state postsecondary institutions may be authorized by the Board to offer degree programs, award academic credit, employ agents, and use protected academic terms within the state of Texas. It also defines prohibited practices and outlines the sanctions that may be imposed for violations of applicable statutes and Board rules, in accordance with the Texas Education Code, Chapter 61, Subchapter G.

§7.2. Definitions.

(a) Except as provided or modified below, the definitions used in Texas Education Code, §61.302, shall apply to this chapter.

(b) The following terms are used throughout this chapter and shall have the meanings assigned below, unless the context clearly indicates otherwise:

(1) Academic Record--Information maintained by an institution that meets the definition in Texas Education Code, §61.3025.

(2) Accreditation--Formal recognition granted to an institution by a U.S.-based accrediting agency recognized by the U.S. Department of Education for meeting established academic and operational standards.

(3) Accrediting Agency--An organization recognized by the U.S. Department of Education to evaluate and accredit postsecondary institutions. A Board-recognized accrediting agency is one whose standards have been reviewed and deemed sufficiently rigorous to qualify institutions for exemptions under this chapter.

(4) Agent--A person employed by or representing a private postsecondary educational institution who solicits students for enrollment at the institution, including solicitation for payment to the institution for registration or enrollment.

(5) Associate Degree Program--A structured set of courses leading to an associate degree, either for direct employment or transfer to a bachelor's program.

(6) Board--The governing body known as the Texas Higher Education Coordinating Board.

(7) Career School or College--A for-profit or nonprofit entity operating in Texas that offers instruction for career training or personal development, unless exempt under Texas Education Code, §132.002. Career school or college may include an entity licensed by the Texas Workforce Commission to offer non-degrees which is also authorized under Subchapters D or G of this chapter (relating to Certificate of Agent Registration, and Requirements for Discontinuation or Revocation of a Provisional Certificate to Operate, respectively) to offer degrees.

(8) Certificate of Approval--Approval or licensure issued by the Texas Workforce Commission for a career school or college to operate and offer instruction in Texas.

(9) Certificate of Authority--Statutory term under Texas Education Code, §61.304, used for temporary authorization granted by the Board to a non-exempt institution which does not have Coordinating Board-recognized institutional accreditation. This chapter refers to a Certificate of Authority as a Provisional Certificate to Operate.

(10) Certificate of Authorization--A type of certificate to operate and grant degrees based on a formal acknowledgment by the Board that an institution qualifies for exemption from certain regulatory requirements under this chapter based on its Coordinating Board-recognized institutional accreditation. It may be:

(A) issued for the duration of the institution's current accreditation term;

(B) conditionally granted for up to fifteen months while a new Texas campus seeks full accreditation and state approval; or

(C) renewed annually for out-of-state institutions conducting experiential learning in Texas.

(11) Certificate of Agent Registration--Authorization issued by the Board for an agent representing a postsecondary institution and soliciting Texas residents for enrollment or payment for enrollment or registration.

(12) Certification Advisory Council--An advisory committee established under Board rules Chapter 1, Subchapter H of this title (relating to Certification Advisory Council), to advise on matters related to postsecondary institutional certification and compliance.

(13) Change of Ownership or Control--A significant transfer of ownership or governance of a postsecondary institution authorized under this chapter, including:

(A) sale or transfer of more than 50% ownership; or

(B) changes in leadership or governing structure of more than 50% management or administrative personnel.

(C) change of ownership or control does not include a transfer to a family member as a result of the retirement or death of the owner if the family member has had at least two years of active management of the postsecondary institution. For purposes of this definition, a member of the owner's family is a parent, sibling, spouse, or child; spouse's parent or sibling; or sibling's or child's spouse.

(14) Classification of Instructional Programs (CIP) Code--A standardized code assigned to a degree program based on its instructional content and intended occupational outcomes, as defined by the U.S. Department of Education National Center for Education Statistics.

(15) Clinical or Practicum Site--An entire facility or location, such as a hospital, business, or school campus. Individual departments, offices clinics, classrooms, or other subdivisions of the facility are not considered the clinical or practicum site.

(16) Commissioner--The Texas Commissioner of Higher Education.

(17) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board, including staff.

(18) Degree--A title or designation (e.g., associate, bachelor's, master's, doctorate) that signifies completion of a recognized academic degree-level program, as defined in Texas Education Code, §61.302, and is approved by accrediting agencies recognized by the Board.

(19) Distance Education--Instruction delivered when the student and instructor are in different physical locations, including, but not limited to online, video-based, or correspondence formats.

(20) Experiential Learning--Learning gained through direct, hands-on experiences outside the classroom, including internships, externships, practicums, clinicals, and fieldwork. "Clinicals" refers specifically to site-based training in health-related programs such as nursing, medicine, and allied health.

(21) Fictitious Degree--A counterfeit, forged, or revoked academic degree.

(22) Fraudulent or Substandard Degree--A degree as defined by Texas Education Code, §61.302, issued by an entity that:

(A) operated in Texas without proper authorization;

(B) operated in another state or country without legal authority or recognized accreditation; or

(C) operated outside the United States and Issued a degree not equivalent to a United States accredited or authorized degree, as determined by the Board under Subchapter G of this chapter.

(23) Full-Time Faculty Member--A person whose:

(A) employment is based upon an official contract, appointment, or agreement with an institution;

(B) principal employment is with that institution;

(C) major assignments are in teaching and research; and

(D) a full-time administrator who teaches classes incidental to administrative duties is not a full-time faculty member.

(24) Institution--A degree-granting postsecondary educational entity.

(25) Licensure--A process of state or other governmental entities that establishes standards of practice and gives legal permission for professional or vocational practice by providing licenses or certifications to individuals who meet those standards.

(26) Licensure Program--A sequence of courses and learning experiences that prepares student for initial licensure.

(27) National Council for State Authorization Reciprocity Agreements (NC-SARA)--A private nonprofit organization which coordinates, in partnership with four regional compacts, the State Authorization Reciprocity Agreement (SARA) implementation and compliance. See the SARA definition in this subchapter.

(28) Out-of-State Public Postsecondary Institution--A public college, university, or similar institution of higher education established and governed by a public body outside Texas that offers or seeks to offer instruction or degrees in Texas. For purposes of this chapter, out-of-state public postsecondary institutions are considered private postsecondary educational institutions subject to the rules of this chapter.

(29) Personally Identifiable Information (PII)--Any data, such as name, address, date of birth, Social Security Number, education records, or other linked identifiers, that can identify a specific student, either alone or when combined with other information.

(30) Physical Presence--A condition met when an institution:

(A) has personnel in Texas conducting educational activities (e.g., teaching, proctoring, supervising experiential learning, or awarding academic credentials);

(B) has personnel in Texas recruiting students; or

(C) maintains a physical location, address, or contact point in Texas.

(D) conditions that are not considered physical presence in the absence of other conditions include:

(i) advertising;

(ii) the occasional participation in a college/career fair involving multiple institutions or other event similarly limited in scope within Texas; or

(iii) teaching distance education courses in which there is no physical contact or same location proximity with Texas residents.

(31) Private Postsecondary Educational Institution--An entity that:

(A) is not a Texas public institution of higher education as defined in Texas Education Code, §61.003;

(B) is either privately owned and operated or controlled by a public body organized outside the boundaries of the State of Texas. For purposes of this chapter, an out-of-state public institution is a private institution;

(C) is incorporated under the laws of Texas, or maintains a place of business in Texas, or has an agent or representative present in Texas, for the purpose of solicitation and enrollment of Texas residents in a degree program or to obtain college-level credit; and

(D) offers or claims to offer a degree program or college-level credit to Texas residents either at a physical location or through electronic means.

(32) Professional Degree--A degree awarded in the fields of medicine (M.D., D.O.), dentistry (D.D.S.), veterinary medicine (D.V.M.), and law (J.D., LL.B.), including recognized equivalents and foreign counterparts.

(33) Program of Study--Any course or grouping of courses which are alleged to entitle a student to a degree or to credits alleged to be applicable to a degree.

(34) Protected Term--Specific academic terms including: "college," "university," "school of medicine," "medical school," "health science center," "school of law," "law school," and "law center," along with their abbreviations, equivalents, and foreign cognates.

(35) Provisional Certificate to Operate/Provisional Authority (Formerly Certificate of Authority)--Temporary authorization granted by the Board to a non-exempt institution to offer degrees or degree-credit courses in Texas while pursuing Board-recognized accreditation.

(36) Reciprocal State Exemption Agreement--A formal agreement between the Board and another state's higher education agency that allows institutions from each state to offer distance education without duplicative oversight.

(37) Sanction--A formal action by an institutional accrediting agency indicating that an institution is not in compliance with accreditation standards. Sanctions may include warnings, probation, or imminent loss of accreditation and are considered violations under this subchapter.

(38) SARA--The State Authorization Reciprocity Agreement, which is an agreement among its member states, districts, and U.S. territories, that establishes policy for interstate distance education among member states.

(39) SARA Member State--A U.S. state, district, or territory that has joined the State Authorization Reciprocity Agreement.

(40) Single Point of Contact--The individual designated by a postsecondary educational institution to serve as the primary liaison with the Board.

(41) Southern Regional Education Board (SREB)--A regional organization that supports education policy and practice in the southern United States. It is one of four regional compacts which are partners with NC-SARA to establish implementation and compliance with SARA.

(42) Substantive Change--A significant modification to an institution's operations, including changes in:

(A) ownership, governance, or location;

(B) accrediting agency or accreditation status;

(C) degree level or program offerings;

(D) institutional name; or

(E) eligibility for federal financial aid based on financial or accreditation status.

(43) U.S. Department of Education--The federal agency responsible for administering federal education policies and regulations, including any successor federal agency to which education policies or regulations are transferred.

(44) Visiting Student--A student enrolled at an out-of-state institution who temporarily takes courses at a Texas institution under a formal agreement between the out-of-state institution and the Texas institution, and for whom credits transfer back to the out-of-state institution.

§7.3. Non-Oversight of Religious Instruction Degrees.

An institution that only offers degrees in religious instruction is exempt from the provisions of this chapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER B. STANDARDS FOR OPERATION OF POSTSECONDARY EDUCATIONAL INSTITUTIONS

19 TAC §§7.13 - 7.25

The new sections are proposed under Texas Education Code, Chapter 61, Subchapter G (§§61.301 - 61.321), which governs the regulation of private postsecondary educational institutions and public out-of-state postsecondary institutions operating in Texas. This includes Subchapter B (§61.026), related to advisory committees, Subchapter G (§61.314), relating to an advisory council on private postsecondary educational institutions, Subchapter H (§§61.401 - 61.405), relating to the regulation of academic terminology, and Texas Education Code, Chapter 132, which pertains to career schools and colleges.

The proposed new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 7.

§7.13. Purpose and Applicability.

(a) The standards of this subchapter are designed to safeguard the public interest by ensuring degree granting institutions meet minimum standards, as required by Chapter 61, Subchapter G of the Texas Education Code, until an institution receives accreditation from a Board-recognized accreditor.

(b) These standards apply to all postsecondary educational institutions operating in Texas not accredited by a Board recognized accreditor, which must meet the standards in this subchapter to qualify for a Provisional Certificate to Operate.

(c) Institutions with Board-recognized accreditation are exempt and shall apply for Certification of Authorization as set forth in Subchapter E of this chapter (relating to Authorization of Accredited Institutions).

§7.14. Standard I - Legal Compliance.

The institution shall operate in compliance with all applicable federal, state, and local laws, regulations, and ordinances for operation of an institution and business in Texas.

§7.15. Standard II - Institutional Structure and Administration.

The institution shall have a governing board, chief academic officer, and administrative structure that supports its mission, ensures accountability, and protects the interests of students, faculty, and staff.

(1) The mission of the institution shall be published and shall define the institution's core purpose and goals, and explain how the offering of its educational programs meets the core purpose and goals.

(2) The governing board shall establish bylaws that guide decision-making and internal governance procedures and requirements for the governing board.

(3) The governing board shall include at least three members who have a minimum of:

(A) three years of experience as higher education administrators; or

(B) five years of experience in administration, management, and governance of business operations related to the core purpose and goals of the institution and its offered degrees.

(C) at least one governing board member shall have at least three years of experience in higher education.

(4) The institution shall have a chief executive officer with the following qualifications:

(A) a graduate degree from an accredited institution; and

(B) at least three years of leadership experience in operations, management or other relevant executive experience.

(C) with governing board approval, an institution may appoint a chief executive officer with a bachelor's degree and exceptional experience in lieu of a graduate degree.

(5) The institution shall have a chief academic officer with the following qualifications:

(A) a doctoral or professional degree from an accredited institution; and

(B) at least two years of leadership experience in curriculum development, accreditation, faculty leadership, and student success.

(C) with governing board approval, an institution may appoint a chief academic officer with a graduate degree and exceptional experience in lieu of a doctoral degree.

(6) The chief academic officer and chief executive officer may serve on the governing board in addition to the three required governing board members.

(7) The administrative structure shall include:

(A) defined and distinct roles and responsibilities for institutional leaders; and

(B) personnel and resources dedicated toward maintaining sufficient administrative capacity to support daily operations.

§7.16. Standard III - Financial Resources and Records.

The institution shall have adequate financial resources and financial stability to provide education of good quality and to fulfill its commitments to students.

(1) The institution shall have sufficient reserves, a line of credit, or a surety instrument to ensure that, together with tuition and fees, it can complete its educational obligations to students enrolled in the current term in the event the institution is unable to admit new students.

(2) Surety Instrument.

(A) if an institution elects to use a surety instrument, the surety instrument shall be in an amount no less than the greater of:

(i) $25,000; or

(ii) an amount equal to or greater than the total cost of providing refunds, including administrative costs associated with processing claims, for a period or term during the applicable academic year in which degrees are offered.

(B) the surety instrument may be drawn upon by the Coordinating Board solely for the benefit of enrolled students.

(3) Institutional financial records shall be maintained in accordance with Generally Accepted Accounting Principles (GAAP) which are set by the Financial Accounting Standards Board (FASB). Nonprofit institutions shall also maintain financial records in accordance with applicable guidelines issued by the National Association of College and University Business Officers (NACUBO).

(4) The institution shall ensure that an independent annual audit is conducted by a certified public accountant and authorized by the governing board. The audit must, at a minimum, determine whether the institution is financially capable of meeting its obligations and continuing operations without risk of liquidation.

(5) The institution shall demonstrate its financial health through positive ratios for:

(A) a primary reserve ratio, calculated as expendable net assets divided by total expenses;

(B) a program viability ratio, calculated as net tuition and fee revenue divided by annual program operating costs; and

(C) an institutional viability ratio, calculated as expendable net assets divided by long-term debt.

§7.17. Standard IV - Faculty Resources.

The institution shall have the necessary faculty resources to deliver an education that ensures student success and that is consistent with the objectives of each course and degree program offered.

(1) The institution shall publish and provide faculty with written policies on academic freedom and faculty employment.

(2) The institution shall provide appropriate professional learning and continuing education opportunities for faculty. If the institution delivers online education, it shall provide appropriate training for faculty teaching online courses.

(3) The institution shall employ enough full-time faculty members to ensure program stability and student engagement.

(A) a minimum of one full-time faculty member must be employed per associate or bachelor's program.

(B) a minimum of two full-time faculty members must be employed per graduate program.

(C) an institution may request an exception to faculty size if it can provide evidence that academic quality is maintained.

(4) The institution shall ensure faculty have appropriate professional experience and qualifications for the academic levels and disciplines in which they provide instruction and hold degrees from accredited institutions:

(A) faculty in academic and licensure programs must hold a master's degree with at least 18 graduate credit hours in the teaching discipline.

(B) faculty in career and technical programs must hold an associate degree in the field or have at least three years of relevant full-time experience.

(C) faculty in general education courses must hold a master's degree with 18 graduate credit hours in the discipline.

(D) faculty in graduate programs must hold a doctorate or the highest degree in the field.

(E) an institution may appoint a faculty member with exceptional professional experience in lieu of formal credentials with governing board approval and documented justification.

(F) faculty with exceptional professional experience in lieu of formal credentials shall constitute less than half of the total faculty members.

§7.18. Standard V - Facilities.

The institution shall have adequate space, equipment, and instructional materials to provide education of good quality.

(1) Health and safety education shall be offered to students, faculty, and staff, including emergency procedures and responses.

(2) If applicable, student housing owned, maintained, or approved by the institution shall be appropriate, safe, adequate, and in compliance with applicable state and local requirements.

(3) If applicable, equipment and classroom space for hands-on learning, including health care programs, shall be aligned with current industry standards, be well-maintained and functional.

§7.19. Standard VI - Student Support.

The institution shall establish student support services that ensure student success during enrollment at the institution and after graduation.

(1) The institution shall have clear and published online admission standards and application evaluation processes.

(A) for undergraduate admission, the institution shall document and verify that students have graduated from high school or completed an equivalent high school equivalency exam.

(B) for graduate admission, the institution shall document and verify that students hold a bachelor's degree from an accredited institution, a Board-authorized institution, or a foreign institution with equivalent credentials evaluated under the criteria in §7.123(a)(2) of this chapter (relating to Review of a Degree from an Entity Which is Not Eligible for a Provisional Certificate to Operate).

(C) the institution may offer remediation for students.

(2) The institution shall have student services that include, at a minimum:

(A) orientation;

(B) advising services that include:

(i) course planning;

(ii) career guidance and job placement support; and

(iii) testing services for students.

(C) financial services that include:

(i) tuition and fee payment processes and support; and

(ii) if applicable, financial aid and student loan services.

(D) registration and enrollment services; and

(E) academic records services that include student access to transcripts and other academic records.

(3) The institution shall provide secure and permanent maintenance of accurate academic records and transcripts for each student, in accordance with Subchapter L of this chapter (relating to Student Data and Protections).

§7.20. Standard VII - Student Rights and Responsibilities.

The institution shall establish, adhere to, and make publicly available, clear policies on student conduct, due process, and grievance procedures, including student grievance procedures.

(1) The institution shall maintain a fair student grievance policy and procedure that at a minimum includes:

(A) types of grievances accepted;

(B) contacts and forms for grievances; and

(C) appeal levels and processes, including a process for appealing to the institution's governing board.

(2) The institution shall establish a process for notifying students of their right to file complaints with applicable government entities as required under state or federal law.

§7.21. Standard VIII - Curriculum.

For each degree program proposed, the institution shall have a clearly structured and academically rigorous program that aligns with the institution's mission and learning objectives.

(1) Each degree program shall have an accurate degree title and major that reflects the curriculum and appears on diplomas and transcripts.

(2) Each degree program shall meet minimum degree credit hour requirements:

(A) academic associate degrees: 60 - 66 semester credit hours, designed for transfer, including at least 15 hours of general education.

(B) applied associate degrees: 60 - 72 semester credit hours, designed for workforce entry, including at least 15 hours of general education. Associate of Occupational Studies (AOS) degrees are subject to the limitation in Subchapter K of this chapter (relating to Administrative Injunctions, Limitations, and Penalties).

(C) bachelor's degrees: Minimum of 120 semester credit hours or in alignment with requirements of a Board-recognized accreditor.

(D) master's degrees: 30 - 36 semester credit hours.

(E) doctoral degrees (post-baccalaureate): Minimum of 60 semester credit hours.

(3) General education shall be included in all undergraduate degree programs and meet the following requirements:

(A) associate: Minimum of 15 semester credit hours.

(B) bachelor's: Minimum of 30 semester credit hours.

(C) general education courses shall include educational content in:

(i) humanities;

(ii) social sciences;

(iii) natural sciences;

(iv) math;

(v) communication; and

(vi) digital literacy.

(4) An institution may partner with an accredited institution to deliver general education for a program.

(5) A minimum of 50% of non-general education courses required for a degree shall be taught by the institution.

(6) Remedial and leveling courses shall not count towards degree requirements.

(7) Institutions may award credit for learning outside traditional academic settings using a consistent, faculty-reviewed process. Recognized exams may be used.

(8) Credit completed outside a traditional academic setting shall be limited to:

(A) no more than 50% of undergraduate credit shall come from non-collegiate sources, such as military training, non-credit workplace training or internships, non-credit workshops, continuing education, or professional certifications.

(B) no graduate credit may be awarded for non-collegiate learning.

(C) life experience alone shall not qualify for credit.

(9) For professional programs that require field-based experience, the institution shall ensure that a sufficient number of placements (such as clinicals or clerkships) are available for the projected enrollments of the degree plan.

§7.22. Standard IX - Learning Resources.

An institution shall provide access for faculty and students to current, organized, inventoried, and discipline-appropriate learning materials, instructional support, online learning resources and policies, and learning management systems.

(1) The institution shall provide appropriate training for faculty and students for all learning resources and learning management systems.

(2) The institution shall ensure regular and substantive interaction between faculty and students in courses and programs.

§7.23. Standard X - Learning Outcomes and Program Assessment.

An institution shall have defined and appropriate learning outcomes and methods for assessing success in its degree programs. The institution shall be able to demonstrate that learning outcomes are being achieved by students.

(1) Learning outcomes shall be measurable and aligned to the program purpose.

(2) Program assessment shall include evaluation of mission alignment, labor market need, curriculum, enrollment, placement, and faculty qualifications.

(3) For licensure programs, program assessment shall include, but not be limited to, licensing exam pass rates which meet standards set by licensing agencies.

(4) An institution shall establish defined labor market need for degree programs and include consideration of existing program capacity in Texas.

§7.24. Standard XI - Institutional Assessment.

The institution shall ensure ongoing institutional assessment to improve academic programs, administration, finances, student services, facilities, and other operations. The institutional assessment shall be appropriately aligned with its plan and timeline for institutional accreditation by a Board-recognized accrediting agency.

§7.25. Standard XII - Policies, Procedures and Publications.

The institution shall maintain appropriate, publicly available, up-to-date policies, procedures, and publications for the fair and transparent operation of the institution.

(1) The institution shall not engage in false, misleading, or deceptive practices in advertising or recruitment.

(2) The institution shall maintain a published and fair cancellation and refund policy with internal processing procedures.

(3) An annual academic catalog shall be published and available to students. The catalog shall include, at a minimum:

(A) mission;

(B) governance structure, including a statement of legal control with the names of trustees, directors, and officers of the governing board;

(C) admissions policies;

(D) current academic programs information, including academic calendar; grading system and satisfactory academic progress; transfer policies; and any special requirements or limitations on programs offered in Texas;

(E) faculty and administrator credentials;

(F) scholarships and other available financial aid;

(G) descriptions of available student services;

(H) policies related to appropriate use of technology; and

(I) required disclosures under the federal Higher Education Act (34 CFR 668.43), including tuition and fees; cancellation and refund policies; licensure information; and accreditation.

(4) The institution shall publish graduation rates and if applicable, job placement rates by program, and disclose these rates to students.

(5) The institution shall issue a diploma and transcript to each student in good standing upon program completion.

(6) The institution shall maintain archived catalogs for alumni and returning students as required by Subchapter L of this chapter (relating to Student Data and Protections).

(7) The institution shall publish, and share with all employees and students, policies and procedures regarding use of technology at the institution.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER C. RECOGNITION OF INSTITUTIONAL ACCREDITING AGENCIES

19 TAC §§7.36 - 7.39

The new sections are proposed under Texas Education Code, Chapter 61, Subchapter G (§§61.301 - 61.321), which governs the regulation of private postsecondary educational institutions and public out-of-state postsecondary institutions operating in Texas. This includes Subchapter B (§61.026), related to advisory committees, Subchapter G (§61.314), relating to an advisory council on private postsecondary educational institutions, Subchapter H (§§61.401 - 61.405), relating to the regulation of academic terminology, and Texas Education Code, Chapter 132, which pertains to career schools and colleges.

The proposed new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 7.

§7.36. Eligibility Criteria for Accrediting Agency Recognition.

(a) The Board may recognize institutional accrediting agencies that meet its eligibility criteria and demonstrate a commitment to academic quality and student success. To be eligible, an accrediting agency must meet the following requirements:

(1) The accrediting agency shall be recognized by the U.S. Department of Education as authorized to accredit institutions offering associate degrees or higher. The accrediting agency shall clearly define the scope of its recognized accreditation.

(2) The accrediting agency shall have as a primary activity the accreditation of institutions legally authorized to award postsecondary degrees in the United States. Evidence demonstrating sufficient degree-granting authorization may be shown by either:

(A) a majority of the institutions accredited by the accrediting agency are legally authorized to award postsecondary degrees; or

(B) at least 50 institutions accredited by the accrediting agency are authorized to award postsecondary degrees.

(3) The accrediting agency must comply with applicable state laws and require accredited institutions to:

(A) comply with all applicable state and local laws; and

(B) clearly disclose the institution's accreditation status to the public.

(b) Accrediting agencies currently recognized by the Board to accredit postsecondary educational institutions with locations in Texas are listed on the Coordinating Board's website.

§7.37. Application for Accrediting Agency Recognition.

(a) An accrediting agency may apply for Board recognition by providing documentation of meeting the eligibility criteria found in §7.36 of this subchapter (relating to Eligibility Criteria for Accrediting Agency Recognition).

(b) The following supporting information shall be submitted in a manner prescribed by and on a form provided by the Coordinating Board:

(1) Verification that the accrediting agency is applying for Board recognition that matches its recognition by the U.S. Department of Education. As documentation of U.S. Department of Education recognition, the accrediting agency shall provide written proof of the scope of current recognition.

(2) Fields of study authorized for its accredited postsecondary institutions using two-digit CIP codes.

(3) All degree levels authorized for its accredited postsecondary institutions.

(4) Certification of compliance with §7.165 of this chapter (relating to Limitations on Educational Institutions).

(5) A current list of Texas postsecondary educational institutions accredited by the accrediting agency.

(6) If the accrediting agency accredits both institutions and programs, it shall provide documentation of adequate policies, procedures, and staff to evaluate institutional quality.

(7) Evidence that the accrediting agency's ownership and governance are independent and serve the public interest, including:

(A) a list of the accrediting agency's board of directors showing:

(i) independence from ownership or financial interest in the agency;

(ii) representation from diverse public interest groups; and

(iii) term limits or appointment processes.

(B) the accrediting agency's bylaws or charter that include:

(i) the mission and values;

(ii) decision-making processes; and

(iii) conflict of interest policies.

(8) The accrediting agency's standards or criteria for initial and ongoing reviews of accreditation, including, but not limited to:

(A) the accrediting agency's policy on public disclosure of accreditation information;

(B) the accrediting agency's policy for appealing accreditation decisions; and

(C) evidence that its standards for accredited institutions align with the Standards for Operation in Subchapter B of this chapter (relating to Standards for Operation of Postsecondary Educational Institutions).

(9) The accrediting agency's procedures for on-site review of institutions applying for initial accreditation or seeking to renew its accreditation, including:

(A) the accrediting agency's requirement of at least three qualified team members per initial accreditation or renewal visit, no conflicts of interest for the team members, and collective expertise to evaluate all relevant standards.

(B) smaller teams may be used for other types of visits, such as interim or new program visits.

(10) A list of team members from its five most recent on-site reviews, including names, employers, titles, and assigned standards.

(11) Documentation that the accrediting agency has the resources to fulfill its responsibilities as an institutional accreditor. The accrediting agency must provide:

(A) the number of institutional site visits completed in the 12 months preceding its application for Board recognition, including identification of staff who participated in the site visits;

(B) a current assets-to-liabilities ratio of at least 1.2; and

(C) a schedule of accreditation fees and the basis for calculating the fees.

(12) Documentation that the accrediting agency's accreditation decisions are fair, evidence-based, and consistently applied. The accrediting agency must provide:

(A) as part of the institutional site visit list in paragraph (11)(A) of this subsection, the final accreditation decision to accredit or not accredit and the basis for the decision;

(B) if using an advisory body for accreditation decisions, description of its structure and role. If not, explain how accreditation decisions are validated; and

(C) a self-evaluation or equivalent process to promote continuous improvement.

§7.38. Maintenance of Accrediting Agency Recognition.

To maintain recognition by the Board, an accrediting agency shall:

(1) Maintain U.S. Department of Education recognition.

(2) Provide written evidence of any changes to the scope of recognition.

(3) If the scope of U.S. Department of Education recognition expands, seek Board approval before accrediting Texas postsecondary educational institutions or approving degree programs offered in Texas under the expanded scope of recognition.

(4) Notify the Coordinating Board whenever its federal re-recognition process begins and submit a renewal application to the Board each time the accrediting agency applies for continued U.S. Department of Education recognition. Applications shall include all information required for initial eligibility and recognition.

(5) Respond to Coordinating Board requests within ten business days.

(6) Notify the Coordinating Board within ten business days of any changes in accreditation of Texas postsecondary institutions, including additional accredited institutions, closure of accredited institutions, loss or voluntary withdrawal of accreditation, and degrees programs approved, denied, ended, or revised.

(7) Notify the Coordinating Board within ten business days of any official actions taken in response to complaints involving a Texas institution, including outcomes.

(8) Require Texas institutions to report to the Coordinating Board annually:

(A) the number of degrees awarded by level; and

(B) fall enrollment figures.

(9) Provide the Coordinating Board notification of changes to accreditation standards within ten business days.

(10) Conduct on-site reviews of accredited institutions at least every ten years.

(11) Invite the Coordinating Board to participate in Texas on-site reviews at least ten business days in advance, at no cost to the Coordinating Board or institution.

§7.39. Denial or Withdrawal of Board-Recognition.

(a) Recognition of the accrediting agency remains in effect unless withdrawn by the Board. Noncompliance with any requirement, including failure to respond to information requests, may lead to withdrawal.

(b) The Coordinating Board will review the accrediting agency's renewal application during its federal re-recognition process to determine if recognition by the Board should continue or be withdrawn.

(c) The Coordinating Board may request a review at any time for good cause, including, but not limited to:

(1) Student or institutional complaints;

(2) Concerns raised by federal or state agencies; or

(3) Allegations or evidence of noncompliance with state law.

(d) The Coordinating Board may consider information from third parties when evaluating an accrediting agency's commitment to quality.

(e) All decisions to deny or withdraw recognition will be made through a vote of the Board.

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SUBCHAPTER D. CERTIFICATE OF AGENT REGISTRATION

19 TAC §§7.50 - 7.53

The new sections are proposed under Texas Education Code, Chapter 61, Subchapter G (§§61.301 - 61.321), which governs the regulation of private postsecondary educational institutions and public out-of-state postsecondary institutions operating in Texas. This includes Subchapter B (§61.026), related to advisory committees, Subchapter G (§61.314), relating to an advisory council on private postsecondary educational institutions, Subchapter H (§§61.401 - 61.405), relating to the regulation of academic terminology, and Texas Education Code, Chapter 132, which pertains to career schools and colleges.

The proposed new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 7.

§7.50. Activities Requiring a Certificate of Agent Registration.

(a) An agent shall apply for a Certificate of Agent Registration with the Coordinating Board prior to solicitation of Texas residents on behalf of a private postsecondary educational institution for enrollment or payment for enrollment or registration. This includes agents soliciting Texas residents from a physical location in Texas or from a location outside the state of Texas.

(b) An individual working on behalf of a private postsecondary institution is not required to apply for a Certificate of Agent Registration if they meet the following conditions:

(1) The individual is part of a college/career fair involving multiple institutions or other events in Texas where information is provided to all attendees;

(2) The individual is employed by a private postsecondary institution which operates under a Certificate of Authorization;

(3) The individual's activities fall within a State Authorization Reciprocity Agreement as defined in Subchapter N of this chapter (relating to Participation in the State Authorization Reciprocity Agreement (SARA)); or

(4) The individual provides an educational service as a faculty member, tutor, or preceptor, or performs other teaching duties for a private postsecondary educational institution.

(c) An agent that fails to apply for registration under the requirements of subsection (a) of this section, is subject to administrative and civil penalties under Texas Education Code, 61.316, and §7.167 of this chapter (relating to Administrative and Civil Penalties).

§7.51. Required Application for a Certificate of Agent Registration.

(a) An agent shall apply for a Certificate of Agent Registration with the Coordinating Board under the provisions of §7.50 of this subchapter (relating to Activities Requiring a Certificate of Agent Registration).

(b) An agent shall apply using the application available on the Coordinating Board website. The application shall include:

(1) Name and contact information for the agent;

(2) Name and contact information for the private postsecondary educational institution proposed for representation;

(3) The agent's educational background;

(4) The agent's employment history as an agent for postsecondary educational institutions;

(5) Information regarding citations, arrests, charges, or convictions for fraud, deceit, misrepresentation, or forgery;

(6) Information regarding withdrawal or denials of an application or license to act as an agent for a postsecondary educational institution;

(7) A notarized affidavit of fair representation;

(8) A notarized certification of institutional affiliation signed by the postsecondary educational institution's Chief Operating Officer, or similar leadership role;

(9) A certification, signed by the agent, that the information contained in the application is complete and accurate; and

(10) The required registration fee published on the Coordinating Board's website.

(c) If the Coordinating Board approves an application for a Certificate of Agent Registration, the Coordinating Board shall provide the certificate to the agent and the affiliated private postsecondary educational institution.

(d) A Certificate of Agent Registration is valid for five years.

(e) If the Coordinating Board denies an application for Certificate of Agent Registration, the Coordinating Board shall provide written notice and the reasons for denial to the agent and the affiliated private postsecondary educational institution.

§7.52. Reapplication for a Certificate of Agent Registration.

(a) An agent may reapply for agent registration 60 to 120 days before the five-year registration period expires.

(b) To reapply for agent registration, an agent shall include the required documentation and Coordinating Board fee under §7.51 of this subchapter (relating to Required Application for a Certificate of Agent Registration).

§7.53. Revocation of Certificate of Agent Registration.

(a) The Coordinating Board may revoke a Certificate of Agent Registration under the following conditions:

(1) The private postsecondary educational institution the agent represents is no longer legally operating in Texas;

(2) The agent made false, deceptive, or misleading statements while recruiting students;

(3) The agent violated any administrative rule under this chapter; or

(4) The agent violated any state law.

(b) Upon revocation, the Coordinating Board shall provide written notice to the agent and the affiliated private postsecondary educational institution with the effective date and reasons for revocation.

(c) A private postsecondary educational institution that becomes aware of agent violations or misconduct under subsection (a)(1) - (4) of this section, shall within three business days:

(1) Notify the Coordinating Board of the agent violations;

(2) Revoke the agent's authority to represent the institution in Texas;

(3) If applicable, notify any media outlets used by the agent and correct any false, deceptive or misleading statements; and

(4) If applicable, notify all affected students and correct any false, deceptive or misleading statements.

(d) Failure to take the actions set forth in subsection (c) of this section may result in Administrative and Civil Penalties as set forth in §7.167 of this chapter (relating to Administrative and Civil Penalties).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Douglas Brock
General Counsel
Texas Higher Education Coordinating Board
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SUBCHAPTER E. AUTHORIZATION OF ACCREDITED INSTITUTIONS

19 TAC §§7.65 - 7.74

The new sections are proposed under Texas Education Code, Chapter 61, Subchapter G (§§61.301 - 61.321), which governs the regulation of private postsecondary educational institutions and public out-of-state postsecondary institutions operating in Texas. This includes Subchapter B (§61.026), related to advisory committees, Subchapter G (§61.314), relating to an advisory council on private postsecondary educational institutions, Subchapter H (§§61.401 - 61.405), relating to the regulation of academic terminology, and Texas Education Code, Chapter 132, which pertains to career schools and colleges.

The proposed new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 7.

§7.65. Requirement to Apply for Accredited Institution Authorization.

(a) An institution with Board-recognized accreditation shall apply for authorization to offer degrees or courses leading to degrees in Texas if:

(1) The institution does not meet the definition of an "institution of higher education" under Texas Education Code, §61.003, or the definition of a "private or independent institution of higher education" under Texas Education Code, §61.003; and

(2) The institution meets one of the following:

(A) has a physical location within Texas from which it will offer degrees or courses leading to degrees;

(B) the institution is an out-of-state institution and will offer experiential learning at Texas-based sites; or

(C) the institution is an out-of-state institution offering degrees and courses leading to degrees to Texas residents and will trigger physical presence as defined in Subchapter A of this chapter (relating to General Provisions), because the institution does not participate in a State Authorization Reciprocity Agreement as defined under Subchapter N of this chapter (relating to Participation in the State Authorization Reciprocity Agreement (SARA)), or is operating outside the policies of such an agreement.

(b) An institution which is otherwise eligible to apply for authorization to offer degrees in Texas will not be authorized by the Board to grant a professional degree, or represent that credits earned in Texas apply toward a professional degree, unless the institution agrees to limit its experiential learning to the same limitations placed on out-of-state SARA institutions under §7.217 of this chapter (relating to Out-of-State SARA Participants).

(c) A postsecondary education institution without Board-recognized accreditation is not eligible for a Certificate of Authorization.

§7.66. Application for a Certificate of Authorization.

(a) An eligible institution may apply for a Certificate of Authorization to offer degrees or courses leading to degrees in Texas.

(1) If an eligible institution has multiple physical locations in Texas, each location shall apply for a Certificate of Authorization.

(2) If an eligible out-of-state institution is applying based on offering experiential learning in Texas, the application shall be made by the institution, not each experiential learning site.

(b) An application form shall be made available on the Coordinating Board's website.

(c) The application shall include:

(1) The institution name as designated in its accrediting agency's records.

(2) The physical address of the institution in Texas. If the institution is only offering experiential learning in Texas, it must provide the address of the out-of-state institution offering experiential learning, experiential learning site addresses in Texas, number of students at each site, and the start and end dates of the experiential learning at each site.

(3) Identification of the chief administrative officer and a single point of contact as defined under Subchapter A of this chapter (relating to General Provisions). If the institution is only offering experiential learning in Texas, it must identify the site supervisor(s) at any experiential learning site.

(4) Identification of other Texas private postsecondary educational institutions owned or operated by the owners or administrators of the institution which have closed, including the date of closure and reason for closure.

(5) A certificate of approval or exemption under Texas Education Code, Chapter 132, from the Texas Workforce Commission.

(6) Documentation of the institution's current grant of accreditation including:

(A) identification of the institution's Board-recognized accreditor;

(B) beginning and end dates of current grant of accreditation;

(C) current negative or adverse actions by the accreditor which do not result in sanctions as defined in Subchapter A of this chapter, including corrective actions taken to address the negative or adverse action.

(D) an institution which is under sanctions by its institutional accreditor may not apply for a Certificate of Authorization.

(7) If the institution is accredited but applying for approval of a new location in Texas, and the Texas Workforce Commission or the institution's Board-recognized accreditor requires Board approval before taking final action, documentation from the Texas Workforce Commission or accreditor acknowledging that a decision on adding the new location can be made within 12 months of the date of the Certificate of Authorization issuance.

(8) A list of degrees approved by its Board-recognized accreditor, including degree level, program name, and CIP code.

(9) Documentation of disclosures to students if a degree program does not lead to licensure or exam eligibility in Texas.

(10) Acknowledgement of compliance with the following requirements:

(A) student complaint procedures under Chapter 1, Subchapter E of this title (relating to Student Complaint Procedure);

(B) continuing compliance with accreditor's standards for operation of institutions;

(C) annual compliance review reporting under this subchapter;

(D) substantive change reporting under Subchapter I of this chapter (relating to Change of Ownership or Control and Other Substantive Changes); and

(E) compliance with student data reporting, and academic records maintenance in Subchapter L of this chapter (relating to Student Data and Protections).

(11) Documentation and date of the most recently published U.S. Department of Education composite score. If the composite score is below 1.5, the institution must include documentation of actions taken to improve the score.

(12) Documentation of cash reserves, credit lines, or surety instruments sufficient to cover current-term obligations to students if the institution ceases operations, showing compliance with financial protections for student tuition and fees under Subchapter L of this chapter.

§7.67. Board Review and Issuance of Certificate of Authorization.

(a) Upon receipt of a complete application for a Certificate of Authorization, the Coordinating Board shall:

(1) Verify the institution's accreditation status and submitted information;

(2) Confirm financial stability; and

(3) If applicable, review corrective actions taken to remain in compliance with its Board-recognized accreditor.

(b) If the private postsecondary educational institution is not under sanctions by its accreditor and meets all requirements, the Board will issue a Certificate of Authorization to:

(1) Offer accredited degrees or degree-related courses at a location in Texas; or

(2) Conduct experiential learning in Texas required for the institution's accredited degree programs.

(c) A Certificate of Authorization shall identify:

(1) The authorized institution's name and address;

(2) The Board-recognized accrediting agency which has authorized the institution;

(3) The degree levels authorized by the accrediting agency and approved to be offered in Texas by the Board; and

(4) The effective and expiration dates.

(d) The Coordinating Board has discretion to conduct a site visit if warranted by facts disclosed in the application for a Certificate of Authorization or in the annual review process.

§7.68. Annual Compliance Review of Certificates of Authorization.

(a) A Certificate of Authorization is reviewed annually to ensure continued compliance with:

(1) Accreditor and state authorization standards;

(2) Student complaint procedures;

(3) Financial stability; and

(4) Accurate public representation.

(b) An institution operating under a Certificate of Authorization shall submit an annual compliance report on a schedule based on its name.

(1) Institutions with names starting "A" through "O" must submit a report by January 15 of each calendar year. The reports are reviewed at the July Board meeting.

(2) Institutions with names starting "P" through "Z" must submit a report by July 15 of each calendar year. The reports are reviewed at the January Board meeting.

(3) Institutions newly authorized within six months of the deadline to submit an annual report may defer reporting to the next calendar year cycle.

(c) A report template shall be made available via the Coordinating Board's website. The institution must attest to compliance with all applicable rules and provide documentation of continued compliance for:

(1) Accreditor and state authorization. Documentation to support the institution's compliance must include:

(A) documentation from its Board-recognized accreditor of any changes in status, programs, ownership, name, or location within the past year;

(B) documentation of current Texas Workforce Commission certificate of approval or exemption;

(C) an updated list of degree programs offered at the postsecondary institution. If authorization is based on experiential learning, an updated list of experiential learning locations with number of students at each learning location; and

(D) identification of the current Single Point of Contact.

(2) Student complaint procedures. Documentation to support the institution's compliance must include:

(A) links to online student complaint procedures or forms; and

(B) a summary of complaints from Texas students within the past 12 months, including whether resolved or pending.

(3) Financial stability. Documentation to support the institution's compliance must include:

(A) an audited financial statement prepared within the last 12 months by an independent CPA, following GAAP;

(B) the institution's last-published federal financial composite score and supporting documentation of the score calculation;

(C) if applicable, U.S. Department of Education documentation of heightened cash monitoring or changes affecting Title IV eligibility and the institution's documentation, as submitted to the U.S. Department of Education, of its plan to meet requirements that would remove the heightened cash monitoring requirement; and

(D) updates or changes to reserves, credit lines, or surety instruments sufficient to meet current-term obligations if the institution ceases operations.

(4) Accurate public representation. Documentation to support the institution's compliance must include:

(A) certification that all advertising is accurate and fair, including disclosure of any program limitations related to licensure or practice in Texas;

(B) certification that the institution will retain Texas-based advertising for five years and provide it upon request;

(C) certification that the institution has complied with §7.181 of this chapter (relating to Academic Records Maintenance and Protection), regarding accessibility of student transcripts for access by students and the Coordinating Board; and

(D) a copy of or link to the current academic catalog with identification of information by page or link for all required catalog components as found in §7.25 of this chapter (relating to Standard XII- Policies, Procedures and Publications).

§7.69. Changes During Operation under a Certificate of Authorization.

(a) A private postsecondary educational institution operating under a Certificate of Authorization must notify the Board within 30 days of changes to its Board-recognized accreditor approvals for its degree-levels or programs. This information and documentation must be submitted through a form provided on the Coordinating Board's website.

(b) A private postsecondary educational institution must notify the Board within 30 days of a change to its Single Point of Contact.

(c) If applicable, upon approval by the Coordinating Board, the institution's program inventory will be updated or a revised Certificate of Authorization issued to reflect any reported change.

§7.70. Certificate of Authorization Expiration and Renewal.

(a) A Certificate of Authorization issued for a physical location in Texas approved by its Board-recognized accreditor expires at the end of the postsecondary educational institution's current accreditation term.

(1) The Certificate of Authorization may be renewed by submitting documentation of a new grant of accreditation by the institution's Board-recognized accreditor.

(A) the institution shall submit documentation of a new grant of accreditation 30 to 90 days before the expiration date of its current Certificate of Authorization.

(B) institutions whose Board-recognized accreditor will not have completed the accreditor's process for renewal of accreditation at the time the Certificate of Authorization expires must submit, 30 to 90 days before the expiration date, documentation from the accreditor that its grant of accreditation continues during the accreditation review process.

(C) upon receipt by the Coordinating Board of documentation that the grant of accreditation continues during the accreditation review process, the Certificate of Authorization will continue until the institutional accreditor makes a final determination on renewal of the grant of accreditation.

(2) The Certificate of Authorization will be renewed if the institution continues to remain in compliance with all requirements of this chapter.

(3) If the institution's Board-recognized accreditor changes, the current Certificate of Authorization shall be revoked under §7.71 of this subchapter (relating to Criteria for Initiating Revocation Procedures for a Certificate of Authorization) and the institution shall submit a new application for a Certificate of Authorization.

(4) If the institution's Board-recognized accreditation ends, the Certificate of Authorization is void.

(b) A Certificate of Authorization issued for a new location in Texas to allow the Texas Workforce Commission or Board-recognized accreditor to take action expires at the end of 12 months from date of issuance.

(1) At the expiration of the 12-month period, the institution shall have obtained Texas Workforce Commission licensure or exemption and Board-recognized approval of the new Texas location.

(2) If the institution has obtained Texas Workforce Commission licensure or exemption and Board-recognized approval for the new Texas location, it shall submit a new application for a Certificate of Authorization which, if granted, will continue until the end of its current grant of accreditation.

(3) If the institution has not obtained Texas Workforce Commission licensure or exemption and Board-recognized approval for the new Texas location, it shall either cease operations and comply with closure requirements under Subchapter J of this chapter (relating to Closure of a Private Postsecondary Educational Institution) or apply for a Provisional Certificate to Operate under Subchapter F of this chapter (relating to Requirements for Application, Renewal, and Amendments to a Provisional Certificate to Operate).

(c) A Certificate of Authorization issued to an out-of-state postsecondary educational institution based on experiential learning at Texas locations expires at the end of 12 months from the date of issuance.

(1) The Certificate of Authorization may be renewed by submitting updated experiential site locations, student numbers at each location, and dates of experiential learning at each location.

(2) The institution shall submit the updated information 30 to 90 days before the expiration date of its current Certificate of Authorization.

(3) The Certificate of Authorization will be renewed if the institution continues to remain in compliance with all requirements of this chapter.

§7.71. Criteria for Initiating Revocation Procedures for a Certificate of Authorization.

(a) An institution operating under a Certificate of Authorization shall notify the Coordinating Board as soon as practicable of any of the conditions in subsection (b)(1) - (5) of this section.

(b) The Coordinating Board shall initiate revocation procedures for a Certificate of Authorization if it has reasonable cause to believe one of the following conditions apply to the institution:

(1) The institution closes;

(2) The institution is not accredited by a Board-recognized accreditor and no longer holds a license or exemption from the Texas Workforce Commission;

(3) A main campus or location of the institution loses accreditation from its Board-recognized accreditor;

(4) A main campus or location is placed under sanctions from its Board-recognized accreditor. The Institution shall notify the Coordinating Board within three business days of written receipt of the sanction. The notification shall include:

(A) accreditor documentation of the sanction;

(B) actions required to meet the accreditor's standards and remove the sanction; and

(C) a timeline for resolution of the sanction.

(5) The institution's Board-recognized accreditor is removed from the U.S. Department of Education or the Board's list of recognized accreditors.

(c) The Coordinating Board may initiate revocation procedures or place conditions on a Certificate of Authorization if it has reasonable cause to believe one of the following conditions apply to the institution:

(1) The institution fails to comply with:

(A) data reporting;

(B) substantive change notifications; or

(C) annual compliance review requirements.

(2) The institution fails to meet the standards in Subchapter B of this chapter (relating to Standards for Operation of Postsecondary Educational Institutions);

(3) The institution fails to correct deficiencies in a timeframe required by the Coordinating Board; or

(4) The institution offers degrees not approved by its Board-recognized accreditor.

§7.72. Revocation Procedures for a Certificate of Authorization.

(a) The Commissioner shall provide written notice to the institution for initiation of revocation procedures. The notice shall include:

(1) The effective date of the proposed revocation, which shall be not less than ten days from the date of notice;

(2) The grounds for revocation;

(3) Any required operational limitations of the institution during the revocation procedures period;

(4) If applicable, actions required for a temporary Provisional Certificate to Operate under §7.73 of this subchapter (relating to Temporary Provisional Certificate to Operate); and

(5) Steps and documentation required for submitting a request for review of the proposed revocation decision.

(b) Within ten days of receiving the notice of initiation of revocation procedures, the institution may submit to the Commissioner a request for review of the grounds for revocation. The request for review may include one or more of the following:

(1) Proof of continued eligibility;

(2) A corrective action plan;

(3) A plan to seek new accreditation; or

(4) Any other information, including written notarized testimony, that the institution wants the Commissioner to consider.

(c) The Commissioner shall review the request under subsection (b) of this section, and issue a written notice of the determination. If adverse, the notice will include the reasons for the determination.

(d) If the institution does not submit a request for review or a signed agreement for a temporary Provisional Certificate to Operate within ten days of the notice of revocation procedures, the institution shall immediately close and follow closure requirements under Subchapter J of this chapter (relating to Closure of a Private Postsecondary Educational Institution).

(e) The institution may appeal the Commissioner's determination to the Board within forty-five (45) days of receipt. Such appeal shall be limited to the record before the Commissioner. Each party shall be provided an opportunity to present oral arguments to the Board.

§7.73. Temporary Provisional Certificate to Operate.

(a) The Commissioner may place an institution on a temporary Provisional Certificate to Operate if the institution's Certificate of Authorization has been revoked under §7.71 of this subchapter (relating to Criteria for Initiating Revocation Procedures for a Certificate of Authorization) if the Commissioner determines one of the following:

(1) The institution still meets the Standards for Operation in Subchapter B of this chapter (relating to Standards for Operation of Postsecondary Educational Institutions);

(2) The accreditor sanctions placed on the institution are not grounds for closure of the institution; or

(3) Immediate closure of the institution would cause undue harm to students attending the institution.

(b) Written notice placing an institution on a temporary Provisional Certificate to Operate shall be provided at the time of revocation. The written notice shall include:

(1) The effective date of the temporary Provisional Certificate to Operate;

(2) The date by which the institution shall submit a full application for a Provisional Certificate to Operate; and

(3) The steps required for reviewing the institution's application for a Provisional Certificate to Operate, include a desk review or site visit, or both.

(c) The institution shall have ten days from the notice of revocation procedures prescribed in §7.72 of this subchapter (relating to Revocation Procedures for a Certificate of Authorization) to agree to the terms of the temporary Provisional Certificate to Operate.

(d) If an institution fails to submit the required application by the date specified in the written notice, the institution shall cease operations and comply with closure requirements under Subchapter J of this chapter (relating to Closure of a Private Postsecondary Educational Institution).

§7.74. Placing Conditions on a Certificate of Authorization.

(a) The Commissioner may place conditions on an institution operating under a Certificate of Authorization if there is reasonable cause to believe the institution has violated any provisions of this chapter.

(b) Written notice of conditions shall be made to the institution and shall include:

(1) The proposed conditions and their effective date, which shall be not less than ten days from the date of notice; and

(2) The grounds for the proposed conditions;

(c) Within ten days of receiving the notice of the proposed conditions, the institution may submit to the Commissioner a request for review of the grounds for conditions and include any documentation the institution would like considered.

(d) The Commissioner shall review the request under subsection (b) of this section, and issue a written notice of determination. If adverse, the notice will include the reasons for the determination.

(e) If the institution does not submit a request for review within ten days, the conditions shall go into effect.

(f) The institution may appeal the Commissioner's determination to the Board within forty-five (45) days of receipt. Such appeal shall be limited to the record before the Commissioner. Each party shall be provided an opportunity to present oral arguments to the Board.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER F. REQUIREMENTSFORAPPLICATION, RENEWAL, ANDAMENDMENTS TO A PROVISIONAL CERTIFICATE TO OPERATE

19 TAC §§7.83 - 7.98

The new sections are proposed under Texas Education Code, Chapter 61, Subchapter G (§§61.301 - 61.321), which governs the regulation of private postsecondary educational institutions and public out-of-state postsecondary institutions operating in Texas. This includes Subchapter B (§61.026), related to advisory committees, Subchapter G (§61.314), relating to an advisory council on private postsecondary educational institutions, Subchapter H (§§61.401 - 61.405), relating to the regulation of academic terminology, and Texas Education Code, Chapter 132, which pertains to career schools and colleges.

The proposed new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 7.

§7.83. Purpose and Applicability.

(a) The purpose of this subchapter is to set forth the requirements and process for initial application, renewal, amendment to, and revocation of a Provisional Certificate to Operate.

(b) This subchapter applies to an institution that:

(1) Is not accredited by a Board-recognized accreditor;

(2) Is not exempt under Texas Education Code, 61.303(a);

(3) Does not meet the following definitions:

(A) "institution of higher education" under Texas Education Code, §61.003; or

(B) "private or independent institution of higher education" under Texas Education Code, §61.003; and

(4) Has or will have a physical location within Texas from which it will offer a degree or courses leading to a degree.

(c) A Provisional Certificate to Operate permits the institution to operate for two years and offer a specified degree in Texas while pursuing accreditation.

(d) A private postsecondary educational institution that meets the criteria in subsection (b) of this section, and proposes to offer a degree or courses leading to a degree shall apply for a Provisional Certificate to Operate if the institution demonstrates it has operated legally for at least two years as:

(1) A non-degree-granting institution in Texas and is expanding to offer degrees or courses leading to degrees;

(2) An exempt religious institution under §7.3 of this chapter (relating to Non-Oversight of Religious Instruction Degrees) that is seeking to offer non-religious degrees or courses leading to non-religious degrees; or

(3) A degree-granting institution authorized by another state.

§7.84. Restrictions on Professional Degrees.

(a) A private postsecondary educational institution which is otherwise eligible to apply for a Provisional Certificate to Operate will not be authorized by the Board to offer a professional degree as defined in Subchapter A of this chapter (relating to General Provisions), unless the Board determines that:

(1) Existing programs at public and private or independent institutions of higher education in Texas are insufficient to meet state or regional workforce demand; and

(2) The institution has the capacity to offer the professional degree, including:

(A) qualified faculty and resources to ensure student success;

(B) attestation of willingness to meet the same academic and approval standards required of public and private or independent institutions of higher education under Texas Education Code, §61.003, which offer the professional degree; and

(C) documentation of adequate field placements (e.g., clinicals, clerkships) available for students.

(b) The Board shall not issue a Provisional Certificate to Operate for a professional degree if the institution:

(1) Is chartered in a foreign country; or

(2) Has its main office or primary educational program located outside the United States.

§7.85. Application for a Provisional Certificate to Operate.

(a) An institution shall apply for a Provisional Certificate to Operate in a manner prescribed by the Coordinating Board and using the application available on the Coordinating Board website.

(b) The submitted application shall include:

(1) The required application fee under §7.86 of this subchapter (relating to Required Fees);

(2) The required application information prescribed by Texas Education Code, 61.305(b); (3) Documentation of meeting the operational requirements under §7.83(d) of this subchapter (relating to Purpose and Applicability);

(4) Required documentation as set forth in the application that meets the criteria for each applicable standard of operation as defined in Subchapter B of this chapter (relating to Standards for Operation of Postsecondary Educational Institutions);

(5) Identification of other Texas private postsecondary institutions owned or operated by the owners or administrators of the institution which have closed, including the date of closure and reason for closure;

(6) Certification that all resources and documentation in application are true, complete, and will be available for review at the site visit; and

(7) Any additional information requested by the Coordinating Board.

§7.86. Required Fees.

(a) The Board shall set and publish fees every two years based on the average cost of:

(1) Staff time;

(2) Application review and consultation; and

(3) External site team evaluation.

(b) Separate fees are set for:

(1) Initial applications;

(2) Renewals; and

(3) Amendments to add degree programs.

(c) Fee changes shall be proposed by the Commissioner and approved by the Board.

§7.87. Required Desk Review.

(a) Upon receipt of an application for a Provisional Certificate to Operate, the application shall undergo a desk review by the Coordinating Board or an independent contractor. The desk review shall:

(1) Determine whether each required element of the application in §7.85 of this subchapter (relating to Application for a Provisional Certificate to Operate), is included in the application; and

(2) Provide one of the following assessments of the application:

(A) foundationally incomplete--the application fails to address the minimum standards;

(B) revisions required--the application requires clarifying documentation that is readily obtainable to address a required element. The institution shall resubmit the application with the requested information within thirty days of the request for clarifying documentation.

(C) ready for site visit--the application addresses all requirements to meet the minimum standards as described in §7.85 of this subchapter.

(b) If an application is deemed "Foundationally Incomplete," the application shall be rejected, and the institution may reapply after one year from the date of denial notice.

(c) A desk review shall not be considered a decision on whether the documentation included in the application meets the minimum standards of operation necessary to be approved for a Provisional Certificate to Operate.

§7.88. Required Site Visit and Site Visit Team.

(a) If an application is determined to be Ready for Site Visit, as prescribed in §7.87 of this subchapter (relating to Required Desk

Review), the Coordinating Board shall facilitate a site visit. The site visit team shall include at least three members, who are not employees of the Coordinating Board, with expertise in postsecondary education. The site team shall be composed of:

(1) Members from institutions of higher education or private or independent institutions of higher education;

(2) Members who do not have previous affiliation with the applicant;

(3) Members who are not part of the Certification Advisory Council at the time of the site visit;

(4) Members qualified to assess applicable standards; and

(5) A subject matter expert in the proposed degree area of study.

(b) The conditions found at the institution and documentation available as of the date of the site visit will determine the site visit team's evaluation and report, the Commissioner's recommendation, and the Board's approval or denial of the institution's application for a Provisional Certificate to Operate.

(c) The Commissioner or the Commissioner's designee shall determine if a site visit is required for a renewal or amendment application based on the results of the desk review.

§7.89. Site Visit Team Assessment.

(a) The site visit team shall use the following rating system for each standard set forth in Subchapter B of this chapter (relating to Standards for Operation of Postsecondary Educational Institutions);

(1) Does Not Meet Minimum Initial Requirements--Institution has not provided sufficient evidence and documentation to demonstrate that it meets the standard.

(2) Meets Initial Requirements With Conditions--Institution has provided minimum sufficient evidence and documentation demonstrating that it meets the standard but may require additional monitoring.

(3) Meets Initial Requirements Without Conditions--Institution has provided evidence and documentation demonstrating that it meets the standard.

(b) If an institution receives a rating of Meets Initial Requirements With Conditions:

(1) Required additional monitoring shall be documented by the Coordinating Board in the initial Provisional Certificate to Operate and shall be fully addressed by the institution prior to submitting a renewal application.

(2) If a rating of Meets Initial Requirements With Conditions is received for more than three (3) standards, the application shall be denied.

(c) If an institution receives a rating of "Does Not Meet Minimum Initial Requirements" on any standard when applying for its initial Provisional Certificate to Operate, the application shall be recommended for denial.

§7.90. Ratings Required for the Renewal of a Provisional Certificate to Operate.

(a) The site visit team shall use the following rating system for each standard set forth in Subchapter B of this chapter (relating to Standards for Operation of Postsecondary Educational Institutions), in evaluating a renewal of a provisional certificate to operate:

(1) Does Not Meet Minimum Renewal Requirements--Institution has not provided sufficient evidence and documentation to demonstrate that it meets the standard.

(2) Meets Renewal Requirements With Conditions--Institution has provided minimum sufficient evidence and documentation demonstrating that it meets the standard but may require additional monitoring.

(3) Meets Renewal Requirements Without Conditions--Institution has provided evidence and documentation demonstrating that it meets the standard. If applicable, the institution has addressed all areas that required additional monitoring in its initial Provisional Certificate to Operate.

(b) An institution shall demonstrate progress towards accreditation in its renewal application.

(c) A renewal certificate shall be recommended for denial if an institution receives a rating of Does Not Meet Minimum Requirements for any standard in its renewal application.

(d) An institution that has a renewal certificate denied shall follow procedures under §7.111 of this chapter (relating to Cessation of Operation and Teach-Out Agreements after Revocation of a Provisional Certificate to Operate.)

§7.91. Site Visit Report and Applicant Response.

(a) The site visit team leader shall coordinate the preparation, and submission to the Coordinating Board, of a written report within 14 days of the site visit. The report shall:

(1) Include a rating as defined in §7.89 or §7.90 of this subchapter (relating to Site Visit Team Assessment and Ratings Required for the Renewal of a Provisional Certificate to Operate, respectively), as applicable, for each standard for operation as defined in Subchapter B of this chapter (relating to Standards for Operation of Postsecondary Educational Institutions).

(2) Be based on the submitted application, any additional documentation provided during the site visit, and observations by the site team at the time of the site visit.

(3) For an initial application, include an assessment of whether the appropriate resources will be in place before the institution begins enrolling students in a degree program.

(4) List any suggested monitoring or conditions.

(b) The Coordinating Board shall provide the report to the applicant within seven days of receiving the report from the site visit team leader.

(c) The applicant may submit a written response to the Coordinating Board not later than thirty days from receiving the site visit team's written report. In its response, the applicant may:

(1) Address any findings that the applicant did not meet a required standard for operation; and

(2) Clarify information or scope of documentation which was available at the time of the site visit.

(d) The site visit team's report and applicant's response will be used to inform recommendations for approval or denial of a Provisional Certificate to Operate.

§7.92. Recommendation to the Commissioner and Board.

(a) Coordinating Board staff shall submit all relevant documentation and a written staff recommendation for approval or denial to the Commissioner.

(b) The Coordinating Board may, at its discretion, request a recommendation from the Certificate Advisory Committee (CAC) regarding approval or denial of the Provisional Certificate to Operate.

(c) The Commissioner shall review the submitted documentation, staff recommendation, and CAC recommendation, if applicable, and provide a recommendation to the Board on the ratings for each standard and for approval or denial of the application for a Provisional Certificate to Operate.

§7.93. Board Review and Issuance of Provisional Certificate to Operate.

(a) The Board shall review the Commissioner's recommendation to approve or deny an application for a Provisional Certificate to Operate, and, at a Board meeting, make the final decision for approval or denial of the certificate.

(b) If the Board approves the application, the Commissioner shall issue an initial or renewal Provisional Certificate to Operate that includes:

(1) The issue date;

(2) The approved degrees or degree-related courses;

(3) The starting and ending dates of the two-year period during which the certificate is valid;

(4) Any specific conditions, restrictions or reporting requirements recommended under §7.91 or §7.92 of this subchapter (relating to Site Visit Report and Applicant Response and Recommendation to the Commissioner and Board, respectively).

(c) If the Board denies the application, the Commissioner shall notify the applicant in writing with the reasons for denial. The institution is eligible to reapply one year from the date of denial.

§7.94. Required Notices, Reporting and Record-Keeping.

(a) An Institution operating under a Provisional Certificate to Operate shall post its Provisional Certificate to Operate in a prominent location on its website and any publications.

(b) An Institution operating under a Provisional Certificate to Operate shall not use misleading terms such as "accredited," "endorsed," or "recommended" by the state.

(c) An Institution operating under a Provisional Certificate to Operate shall provide the following documentation to the Coordinating Board:

(1) Upon issuance of the Provisional Certificate to Operate, within thirty days, a list of agents for the institution;

(2) Upon occurrence, within thirty days:

(A) changes in leadership, or facilities;

(B) a change in Texas Workforce Commission or other Texas state agency exemption or licensure;

(C) updated audited annual financial statements;

(D) updated financial surety instruments; and

(E) updates or changes in the institution's accreditation plan or timeline.

(F) significant changes in faculty composition

(d) Institutions operating under provisional authority must maintain student records, including enrollment, credits earned, and degrees awarded.

§7.95. Representing Transferability of Credit with Provisional Certificate to Operate.

An institution operating under a Provisional Certificate to Operate may enroll students in courses intended to transfer to another institution's degree program only if:

(1) The receiving institution is named and is accredited by a Coordinating Board recognized accreditor;

(2) The transferable courses are clearly identified and documented; and

(3) A written agreement between both institutions is approved by their governing boards or delegated officials and filed with the Coordinating Board.

§7.96. Amendments to a Provisional Certificate to Operate.

(a) Institutions are required to receive Board approval before offering a new or different degree.

(1) An amendment application to add or revise a degree under an existing program of study may be made not less than 180 days after the issuance of an initial Provisional Certificate to Operate.

(2) An institution submitting a renewal application for a Provisional Certificate to Operate may make a separate application to add or revise a degree program under an existing program of study or under a new program of study after the renewal application is approved by the Board.

(b) An application to add a degree under a new program of study requires a site visit.

(c) An institution operating under a Provisional Certificate to Operate which includes a restriction against adding or revising a degree program during the Certificate's term shall not apply to add or revise a degree program as long as the restriction remains active.

(d) Amendment applications shall be submitted using Coordinating Board-provided forms and include the applicable amendment fee under §7.86 of this subchapter (relating to Required Fees).

(e) The Commissioner may assign an independent consultant, the Certification Advisory Council, or both, to review the amendment application and make a recommendation to the Commissioner.

(f) If an application for an amendment is recommended by the Commissioner and approved by the Board, the Commissioner shall issue an amended Provisional Certificate to Operate reflecting the new or revised degree program.

§7.97. Renewal of a Provisional Certificate to Operate.

(a) A Provisional Certificate to Operate is valid for two years from the date granted.

(b) Renewal applications.

(1) A renewal application for a Provisional Certificate to Operate may be made every two years and shall be submitted between 180 days and 210 days before the current provisional authority expires. The renewal application shall:

(A) be submitted in a manner prescribed by the Coordinating Board on an application form provided on the Board website;

(B) contain the required elements for a renewal application under §7.85 of this subchapter (relating to Application for a Provisional Certificate to Operate);

(C) include the required renewal fee under §7.86 of this subchapter (relating to Required Fees); and

(D) include documentation of any accreditation applications or renewals.

(2) The Board may approve a renewal of a Provisional Certificate to Operate at a Board meeting if it determines the institution:

(A) meets all required standards; and

(B) is making satisfactory progress toward accreditation.

(c) An institution may operate under a Provisional Certificate to Operate for a total of eight years. After eight years, the institution shall be accredited by a Board-recognized accreditor or will no longer be authorized to award degrees.

(d) Appeal for extension.

(1) If an institution is not accredited after eight years, the institution may appeal to the Board for an extension of eligibility for a Provisional Certificate to Operate.

(2) The appeal shall be submitted in a manner prescribed by the Coordinating Board. The Coordinating Board staff shall make a recommendation to the Commissioner as to whether good cause exists to extend eligibility including, but not limited to:

(A) delay in receiving accreditation caused by an accreditor;

(B) natural disaster; or

(C) any other factor outside of the institution's control.

(3) The Commissioner shall make a recommendation to the Board for approval or denial of the extension.

(4) The Board shall consider the request at a Board meeting and may approve or deny the request.

§7.98. Right to Request Hearing.

If an original, amended or renewal application is denied under this subchapter, the institution may request a hearing, under the Administrative Procedure Act (APA), Chapter 2001, Government Code. A hearing requested pursuant to the APA is subject to Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

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SUBCHAPTER G. REQUIREMENTS FOR DISCONTINUATION OR REVOCATION OF A PROVISIONAL CERTIFICATE TO OPERATE

19 TAC §§7.108 - 7.113

The new sections are proposed under Texas Education Code, Chapter 61, Subchapter G (§§61.301 - 61.321), which governs the regulation of private postsecondary educational institutions and public out-of-state postsecondary institutions operating in Texas. This includes Subchapter B (§61.026), related to advisory committees, Subchapter G (§61.314), relating to an advisory council on private postsecondary educational institutions, Subchapter H (§§61.401 - 61.405), relating to the regulation of academic terminology, and Texas Education Code, Chapter 132, which pertains to career schools and colleges.

The proposed new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 7.

§7.108. Purpose and Applicability.

(a) The purpose of this subchapter is to outline the requirements and process for the discontinuation or revocation of a Provisional Certificate to Operate.

(b) This subchapter applies to an institution operating under a Provisional Certificate to Operate.

§7.109. Discontinuing a Degree Program While Under a Provisional Certificate to Operate.

(a) An institution operating under a Provisional Certificate to Operate which discontinues a degree program shall submit to the Coordinating Board a teach-out agreement pursuant to §7.112 of this subchapter (relating to Requirements for Teach-Out Agreements).

(b) If an institution operating under Provisional Certificate to Operate discontinues all degree programs, the Provisional Certificate to Operate is automatically revoked.

§7.110. Revocation of Provisional Certificate to Operate.

(a) The Coordinating Board may revoke a Provisional Certificate to Operate if the institution:

(1) No longer holds a Certificate of Approval or Exemption from the Texas Workforce Commission, if one is required;

(2) Fails to comply with required reporting or notification under Subchapter I of this chapter (relating to Change of Ownership or Control and Other Substantive Changes) or Subchapter L of this chapter (relating to Student Data and Protections);

(3) Offers degrees or courses not approved by the Board;

(4) Fails to maintain the operational standards in Subchapter B of this chapter (relating to Standards for Operation of Postsecondary Educational Institutions);

(5) Violates any rule or regulation applicable to private postsecondary institutions under this chapter;

(6) Fails to comply with any conditions or reporting requirements in its Provisional Certificate to Operate; or

(7) Included false information in its application.

(b) The Coordinating Board shall notify the institution in writing, via email and certified mail, of the grounds for revocation. Within ten days, the institution shall:

(1) Cease operations and follow the provisions under §7.111 of this subchapter (relating to Cessation of Operation and Teach-Out Agreements after Revocation of a Provisional Certificate to Operate); or

(2) Respond with evidence of continued eligibility and, if applicable, submit required data.

(c) The Commissioner will review the response and issue a determination not later than thirty days from receipt of the institutional response.

§7.111. Cessation of Operation and Teach-Out Agreements after Revocation of a Provisional Certificate to Operate.

(a) If a Provisional Certificate to Operate is revoked, the institution shall immediately stop all operations, including:

(1) Granting degrees;

(2) Offering degree-related courses;

(3) Accepting payments for such courses; and

(4) Enrolling new students.

(b) Within thirty days of revocation, the institution shall submit for approval to the Coordinating Board a teach-out agreement pursuant to §7.112 of this subchapter (relating to Requirements for Teach-Out Agreements).

(c) The institution shall comply with closure requirements under Subchapter J of this chapter (relating to Closure of a Private Post-secondary Educational Institution).

§7.112. Requirements for Teach-Out Agreements.

(a) A teach-out agreement shall:

(1) Ensure students can complete their education through a teach-out agreement with:

(A) another institution holding a Provisional Certificate to Operate;

(B) an institution operating under a Certificate of Authorization; or

(C) a public or private or independent institution of higher education as defined in Texas Education Code, §61.003.

(2) Include provisions for student records, student transfer, and degree completion; and

(3) Be signed by the governing board or designated official for the closing institution and an institution listed in paragraph (1)(A) - (C) of this subsection;

(b) Each teach-out agreement shall be submitted, in writing, to the Coordinating Board.

(c) The Coordinating Board shall notify the institution of either approval or changes required to the teach-out agreement prior to approval.

(d) Upon receipt of written approval from the Coordinating Board, within seven days, the institution shall implement the teach-out agreement.

§7.113. Reapplication after Revocation of Provisional Certificate to Operate.

(a) Institutions shall not apply for a Provisional Certificate to Operate for at least one year after the date the Provisional Certificate to Operate was revoked.

(b) A new application after revocation shall address:

(1) Correction of all deficiencies specified by the Coordinating Board revocation letter;

(2) The institution's progress toward accreditation during the revocation period, if applicable;

(3) A record of effective institutional management during the revocation period; and

(4) Compliance with any conditions, restrictions, or reporting requirements from the previous provisional authority period.

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SUBCHAPTER H. REVIEW AND USE OF DEGREES FROM INSTITUTIONS NOT ELIGIBLE FORAPROVISIONALCERTIFICATE TOOPERATE

19 TAC §§7.121 - 7.125

The new sections are proposed under Texas Education Code, Chapter 61, Subchapter G (§§61.301 - 61.321), which governs the regulation of private postsecondary educational institutions and public out-of-state postsecondary institutions operating in Texas. This includes Subchapter B (§61.026), related to advisory committees, Subchapter G (§61.314), relating to an advisory council on private postsecondary educational institutions, Subchapter H (§§61.401 - 61.405), relating to the regulation of academic terminology, and Texas Education Code, Chapter 132, which pertains to career schools and colleges.

The proposed new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 7.

§7.121. Entities Which May Have Degrees Eligible for Review.

An entity that is not eligible for a Provisional Certificate to Operate but may have degrees eligible for review is:

(1) A degree-granting entity which is operating in another U.S. state, is in compliance with its state's regulations concerning conferral of degrees or in the state in which a degree recipient was residing, and does not have institutional accreditation which is recognized by the Coordinating Board; or

(2) A degree-granting entity which is operating outside the United States, is in compliance with its country's regulations concerning conferral of degrees and does not have institutional accreditation which is recognized by the Coordinating Board.

§7.122. Persons Who May Request Review of a Degree from an Institution Which is Not Eligible for Provisional Certificate to Operate.

(a) A person who holds a degree from an entity as described in §7.121 of this subchapter (relating to Entities Which May Have Degrees Eligible for Review), or the entity itself may request a review by the Coordinating Board.

(b) Requests for review shall be made on a form provided by the Coordinating Board. The person or institution submitting the request shall provide the fee under §7.125 of this subchapter (relating to Fees for Review of a Degree) and sufficient documentation for a comprehensive review of the degree.

§7.123. Review of a Degree from an Entity Which is Not Eligible for a Provisional Certificate to Operate.

(a) Degrees from an entity described in §7.121 of this subchapter (relating to Entities Which May Have Degrees Eligible for Review), will be evaluated by the Coordinating Board to determine equivalency to a degree awarded by an institution authorized to award degrees in Texas.

(1) Standards found in Subchapter B of this chapter (relating to Standards for Operation of Postsecondary Educational Institu-

tions) will be used to assess whether the degree meets standards for curriculum and degree credits.

(2) Standards of a foreign credential evaluation service which is a member of the National Association of Credential Evaluation Services (NACES) or the Association of International Credential Evaluators (AICE) may be used to provide a course-by-course evaluation of a foreign credential.

(b) The Commissioner or designee shall use a reviewer to conduct a desk review of the degree review application and documentation. A reviewer may be:

(1) An independent consultant who has experience in accredited postsecondary institutions and knowledge of accreditation standards; or

(2) A foreign credential evaluation service which is a member of the National Association of Credential Evaluation Services (NACES) or the Association of International Credential Evaluators (AICE).

(c) The reviewer shall provide a written report on the equivalency of the submitted degree with a degree awarded by an institution authorized to award degrees in Texas.

§7.124. Recommendation to the Commissioner.

(a) Coordinating Board staff shall submit all relevant documentation and a written recommendation for approval or denial to the Commissioner.

(b) The Commissioner shall review the submitted documentation, and staff recommendation, and make a final determination on equivalency of the degree.

(c) If the Commissioner determines the degree is equivalent to a degree awarded by an institution authorized to award degrees in Texas, the Commissioner shall issue a letter providing:

(1) The degree conferred by the entity is equivalent to a degree awarded by an institution authorized to award degrees in Texas;

(2) The degree is acceptable for use in the state; and

(3) The degree approval is limited to the time at which the degree was conferred.

(d) If the Commissioner determines the degree is not equivalent to a degree awarded by an institution authorized to award degrees in Texas, the Commissioner shall issue a letter stating that degree is not acceptable for use in the state.

§7.125. Fees for Review of a Degree.

The Coordinating Board shall charge the applicant a fee in an amount necessary to cover the cost of conducting the review. The fee shall be posted on the Coordinating Board website.

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SUBCHAPTER I. CHANGE OF OWNERSHIP OR CONTROL AND OTHER SUBSTANTIVE CHANGES

19 TAC §§7.135 - 7.137

The new sections are proposed under Texas Education Code, Chapter 61, Subchapter G (§§61.301 - 61.321), which governs the regulation of private postsecondary educational institutions and public out-of-state postsecondary institutions operating in Texas. This includes Subchapter B (§61.026), related to advisory committees, Subchapter G (§61.314), relating to an advisory council on private postsecondary educational institutions, Subchapter H (§§61.401 - 61.405), relating to the regulation of academic terminology, and Texas Education Code, Chapter 132, which pertains to career schools and colleges.

The proposed new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 7.

§7.135. Change in Ownership or Control.

(a) A change of ownership or control of a private postsecondary educational institution renders its Certificate of Authorization or Provisional Certificate to Operate void unless the institution meets the requirements of this subchapter.

(b) Ownership or control transfers within the same corporate entity (e.g., transfer between subsidiaries or divisions or reallocation of ownership shares), which are approved by the institutional accreditor, may allow an institution to continue operating under a Certificate of Authorization or Provisional Certificate to Operate at the determination and discretion of the Coordinating Board. The institution shall comply with all requirements in this subchapter.

(c) Changes to approved degree programs resulting from a change in ownership or control are considered program revisions. Program revisions must be submitted for approval under the procedures in Subchapters E and F of this chapter (relating to Authorization of Accredited Institutions and relating to Requirements for Application, Renewal, and Amendments to a Provisional Certificate to Operate, respectively).

§7.136. Requirements to Maintain Authorization to Operate During a Change in Ownership or Control.

The Commissioner may allow an institution to retain its Certificate of Authorization or Provisional Certificate to Operate during and after a change in ownership or control if the institution:

(1) Notifies the Coordinating Board in writing no later than 90 days prior to the proposed ownership change;

(2) Submits the following required documentation:

(A) proof of compliance with Texas Workforce Commission requirements for a change of ownership or control;

(B) certification from the new owner or controlling interest agreeing to follow all applicable state law and Board rules;

(C) documentation of accreditor approval for the new owner or controlling interest or evidence that the new owner or controlling interest can meet the terms of the current certificate of authorization or provisional authority to operate a non-accredited institution; and

(D) evidence of financial stability, including:

(i) audited financial statements for the new owner or controlling interest;

(ii) certification that the new owner or controlling interest is not under federal financial aid restrictions or debarment;

(iii) if requested, audited financial records of the new owner or controlling interest; and

(iv) if applicable, identification of a new Single Point of Contact.

§7.137. Other Substantive Changes Requiring Notification.

(a) Notifications of substantive changes shall be made to the Coordinating Board by the institution's Single Point of Contact.

(b) Substantive changes required to be reported to the Coordinating Board include:

(1) Governance changes;

(2) Location changes;

(3) Accrediting agency or accreditation status;

(4) Degree level or program offerings;

(5) Institutional name change;

(6) Eligibility for federal financial aid based on financial or accreditation status; or

(7) Any other significant modification to an institution's operations which could affect the institution's authorization status.

(c) Institutions shall provide documentation of institutional accreditor or governmental agency approval as applicable to the substantive change.

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SUBCHAPTER J. CLOSURE OF A PRIVATE POSTSECONDARY EDUCATIONAL INSTITUTION

19 TAC §§7.148 - 7.151

The new sections are proposed under Texas Education Code, Chapter 61, Subchapter G (§§61.301 - 61.321), which governs the regulation of private postsecondary educational institutions and public out-of-state postsecondary institutions operating in Texas. This includes Subchapter B (§61.026), related to advisory committees, Subchapter G (§61.314), relating to an advisory council on private postsecondary educational institutions, Subchapter H (§§61.401 - 61.405), relating to the regulation of academic terminology, and Texas Education Code, Chapter 132, which pertains to career schools and colleges.

The proposed new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 7.

§7.148. Notification of Closure.

(a) A private postsecondary educational institution shall notify the Coordinating Board in writing at least 90 days before its planned closure date.

(b) If the closure is unexpected, the private postsecondary educational institution shall notify the Coordinating Board immediately upon a decision to cease operations and close the institution.

§7.149. Withdrawal of Authority to Operate Upon Closure.

(a) A private postsecondary educational institution's authority to operate is automatically withdrawn upon closure. Withdrawal of authority to operate applies to institutions under a Certificate of Authorization or a Provisional Certificate to Operate.

(b) If the owners or administrators of the closing institution seek to operate a new institution, the Board may consider, when reviewing an application, the history with other Texas private postsecondary institutions owned or operated by the owners or administrators of the closing institution.

§7.150. Requirements for a Closing Private Postsecondary Educational Institution to Protect Students.

(a) If students are enrolled at the time of closure, the closing institution shall ensure students can complete their education by arranging a Board-approved teach-out agreement pursuant to §7.112 of this chapter (relating to Requirements for Teach-Out Agreements).

(b) The closing institution shall transfer all academic records in accordance with Subchapter L of this chapter (relating to Student Data and Protections).

§7.151. Limited Authorization to Teach Out Students of a Closed Private Postsecondary Educational Institution.

(a) If the teach-out institution is not already approved to offer the degrees which are subject to the teach-out agreement, the Commissioner may grant additional limited authority to an institution teaching out students from a closed private postsecondary educational institution. The teach-out institution shall be:

(1) Accredited by a Board-recognized accreditor; and

(2) Operating as one of the following institutions:

(A) a private postsecondary educational institution under a certificate of authorization;

(B) an out-of-state postsecondary educational institution which meets the requirements under this chapter to operate as a private postsecondary educational institution;

(C) a public institution of higher education; or

(D) a private or independent institution of higher education.

(b) The temporary authorization is limited to:

(1) The period of time needed to teach-out the last student enrolled in a degree program at the time of closure;

(2) The location of the teach-out degree programs is either at an existing authorized location of the teach-out institution or at a temporary location to be utilized only for the teach-out degree programs;

(3) The degree program is temporarily approved by the teach-out institution's accreditor at either the teach-out institution's existing authorized location or a temporary location to be utilized only for the teach-out degree programs;

(4) The degree program to be offered by the teach-out institution has been previously approved by the accreditor for another location of the teach-out institution. This location may be either in-state or out-of-state; and

(5) If licensure is required for graduates of the teach-out degree, the agency responsible for licensure of graduates has approved the teach-out agreement;

(c) The teach-out institution shall be authorized during the limited period of time to award the teach-out degrees under the teach-out institution's name.

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SUBCHAPTER K. ADMINISTRATIVE INJUNCTIONS, LIMITATIONS, AND PENALTIES

19 TAC §§7.163 - 7.169

The new sections are proposed under Texas Education Code, Chapter 61, Subchapter G (§§61.301 - 61.321), which governs the regulation of private postsecondary educational institutions and public out-of-state postsecondary institutions operating in Texas. This includes Subchapter B (§61.026), related to advisory committees, Subchapter G (§61.314), relating to an advisory council on private postsecondary educational institutions, Subchapter H (§§61.401 - 61.405), relating to the regulation of academic terminology, and Texas Education Code, Chapter 132, which pertains to career schools and colleges.

The proposed new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 7.

§7.163. Prohibited Conduct.

A person or institution may not engage in the following activities unless authorized by the Coordinating Board:

(1) Grant, award, or offer to award a degree without a valid Certificate of Authorization or Provisional Certificate to Operate.

(2) Claim or imply that credits earned are transferable toward a degree at another institution unless:

(A) the transferring institution holds a Certificate of Authorization or Provisional Certificate to Operate; and

(B) a written agreement exists with the receiving institution.

(3) Award or offer to award an honorary degree without a Certificate of Authorization or Provisional Certificate to Operate, or knowingly solicit or encourage others to seek or accept such a degree. Any honorary degree shall clearly state in writing that it is honorary.

(4) Use a protected term as defined in Subchapter A (relating to General Provisions) in the official name or title of an institution or to describe an institution, without Board approval. This prohibition applies to educational or training establishments as defined in Texas Education Code, §61.302, and includes soliciting others to pursue degrees or credits from institutions the actor knows is improperly using such terms.

(5) Act as an agent recruiting students for a private postsecondary educational institution without a required Certificate of Agent Registration.

(6) Knowingly use or claim a fraudulent, substandard, or fictitious degree in Texas:

(A) in advertisements or business promotions; or

(B) with intent to:

(i) obtain employment or licensure;

(ii) gain admission to an educational program;

(iii) receive promotions or benefits; or

(iv) secure a government position with authority over others.

§7.164. Publication of Authorized and Unauthorized Degrees.

The Coordinating Board shall, to the extent known, maintain and publish on its website:

(1) Accreditation and authorization status of private postsecondary educational institutions operating in Texas;

(2) Identification of institutional accreditors recognized by the Coordinating Board to accredit degree-granting institutions operating in Texas;

(3) Institutions found to be in violation of this chapter or whose degrees may not be legally used in Texas; and

(4) Other relevant information to protect the public from fraudulent or substandard degrees.

§7.165. Limitations on Educational Institutions.

(a) Educational institutions may conduct limited activities on land under federal jurisdiction.

(1) Educational institutions operating on land under exclusive federal jurisdiction in Texas must limit the following activities to that land and to individuals who live or work there, including their dependents:

(A) student recruitment;

(B) advertising of programs or courses; and

(C) delivery of degree programs or courses.

(2) If operating outside such federal land, these educational institutions shall comply fully with all applicable rules under this chapter.

(b) Associate of Occupational Studies degrees shall not be offered by a private postsecondary educational institution unless the institution has been authorized by the Coordinating Board to offer and award these degrees.

(1) Authorized institutions may offer the Associate of Occupational Studies degrees only in:

(A) automotive Mechanics;

(B) diesel Mechanics;

(C) refrigeration; and

(D) electronics.

(2) No new Associate of Occupational Studies program areas shall be considered by the Board.

(3) Authorized institutions shall:

(A) use the full term "Associate of Occupational Studies" when referring to the degree; and

(B) not represent the Associate of Occupational Studies degree (AOS) as equivalent to an Associate of Applied Science (AAS) or Associate of Arts (AA) degree.

§7.166. Criminal Offenses.

Violations of this chapter may constitute criminal offenses pursuant to:

(1) Texas Penal Code, §32.52, for use of a fraudulent, substandard, or fictitious degree.

(2) Texas Education Code, §61.304, for granting, offering, or soliciting degrees without a certificate of authority.

(3) Texas Education Code, §61.312, for granting, offering, or soliciting honorary degrees without a certificate of authority.

(4) Texas Education Code, §61.313, for unlawful use of protected terms.

(5) Any other state or federal law imposing criminal penalties.

§7.167. Administrative and Civil Penalties.

(a) The Commissioner may impose administrative penalties for violations of the requirements in this chapter. The Commissioner may assess the following administrative penalties to a person:

(1) $3,000 per violation for conferring or offering to confer a degree on behalf of a private postsecondary educational institution without a Certificate of Authorization or Provisional Certificate to Operate.

(2) $1,000 per violation for representing that credits earned or granted by a private postsecondary educational institution without a Certificate of Authorization or Provisional Certificate to Operate are applicable for credit toward a degree to be granted by another person or institution.

(3) $1,000 for establishing a private postsecondary educational institution without a Certificate of Authorization or Provisional Certificate to Operate and using a protected term in the name of the institution.

(4) $1,000 for establishing an educational or training establishment and using a protected term in the name or title of the establishment.

(5) $3,000 for failing to maintain enrolled or former student academic records as required by the Coordinating Board, or failing to protect the personally identifiable information of enrolled or former students per violation.

(6) $1,000 for an unregistered agent soliciting a student for enrollment in a private postsecondary institution per violation.

(b) A person who violates Texas Education Code, §§61.301 - 61.321 or this chapter is liable for civil penalty of up to $1,000 per day per violation, in addition to all other remedies.

§7.168. Other Legal Remedies.

(a) Violations of the requirements in this chapter may constitute deceptive acts under Texas Business and Commerce Code, §17.46.

(b) This subchapter does not limit any rights or remedies available under the Texas Business and Commerce Code, Chapter 17, or any other applicable state or federal law.

(c) Any person or institution whose operations are found to be in violation under this chapter shall cease those operations immediately.

(d) The Commissioner may report information concerning violations of this chapter to the Attorney General. The Attorney General may investigate such reports and bring legal action including but not limited to a suit to enjoin any alleged violation.

§7.169. Process for Notice and Appeal of Penalty Assessment.

(a) The Commissioner shall notify the person or institution subject to penalty in writing via email and certified mail, stating:

(1) The facts of the violation;

(2) The penalty amount; and

(3) The right to request a hearing.

(b) The penalty becomes final unless the recipient requests a hearing within forty-five (45) days of receiving the notice, in accordance with Chapter 1, Subchapter B of this title (relating to Dispute Resolution).

(c) If the penalty is not paid within thirty days after becoming final, the Commissioner may refer the matter to the Attorney General for collection, including court costs and attorney fees.

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SUBCHAPTER L. STUDENT DATA AND PROTECTIONS

19 TAC §§7.180 - 7.185

The new sections are proposed under Texas Education Code, Chapter 61, Subchapter G (§§61.301 - 61.321), which governs the regulation of private postsecondary educational institutions and public out-of-state postsecondary institutions operating in Texas. This includes Subchapter B (§61.026), related to advisory committees, Subchapter G (§61.314), relating to an advisory council on private postsecondary educational institutions, Subchapter H (§§61.401 - 61.405), relating to the regulation of academic terminology, and Texas Education Code, Chapter 132, which pertains to career schools and colleges.

The proposed new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 7.

§7.180. Student Data Reporting.

All institutions authorized under this chapter shall submit annual student data reports to the Coordinating Board.

(1) Reports shall be submitted in the format specified by the Coordinating Board.

(2) The data shall be maintained and readily available in student academic records as listed in this subchapter.

(3) Annual student data reporting may include:

(A) enrollment figures;

(B) retention and graduation rates;

(C) degrees awarded;

(D) demographic information; and

(E) other data necessary to evaluate institutional performance and compliance.

§7.181. Academic Records Maintenance and Protection.

(a) An institution authorized under this chapter shall:

(1) Maintain secure and permanent academic records and catalogs as required in Subchapter B of this chapter (relating to Standards for Operation of Postsecondary Educational Institutions) using current data protection standards; and

(2) Protect the personally identifiable information of all current and former students.

(b) At the end of each academic year, the institution shall:

(1) Consolidate records for all students who graduated, withdrew, or stopped attending that year;

(2) Store these records in a printable electronic format specified by the Coordinating Board, such as PDF or other readable format which does not require specialized software or licensure; and

(3) Divide the records into a separate file for each student.

(c) The institution shall make student academic records available to the Coordinating Board upon request.

(d) An institution shall, at a minimum, provide the following information on a student transcript:

(1) Sufficient information to identify the student for which academic information is provided;

(2) Dates of enrollment;

(3) Specific semesters or quarters in which courses were taken;

(4) Course information, including course name, code, or title;

(5) Number of credits assigned to each course;

(6) Letter grade or numerical score earned by the student, including, as applicable, withdrawals or incomplete courses;

(7) Explanation of grading scale;

(8) An overall grade point average;

(9) Designation of degree earned, including any specialized certifications necessary for licensure;

(10) Indication as to official or unofficial records; and

(11) Signature or other designation showing the transcript was prepared by the institution.

§7.182. Academic Records Management Upon Private Postsecondary Institution Closure.

(a) An institution authorized under this chapter shall submit to the Coordinating Board a plan to secure and store all student records. This plan shall be submitted the earlier date of either the notice of planned closure or 90 days prior to closure.

(b) If the institution is part of a larger educational system still operating in the U.S., records shall be:

(1) Maintained at the main campus or corporate office; and

(2) Accompanied by up-to-date contact information for transcript requests. The educational system shall continue to provide contact updates or changes for transcript requests.

(c) If students are transferred to another institution through a teach-out agreement, the receiving institution shall maintain those students' academic records.

(d) If the institution is closing all locations, it shall transfer all academic records to the Coordinating Board, as a repository of last resort. These records shall:

(1) Include all academic information typically required for transfer or graduate study;

(2) Be submitted in a Coordinating Board-specified format under this subchapter with a separate, printable file for each student; and

(3) Include a final copy of the student catalog showing degree plans and course descriptions.

(e) If the Commissioner believes student records are at risk of being lost, destroyed, or hidden during a closure, the Commissioner may seek court authority to take possession of the records on behalf of the Board.

§7.183. Closed Institution Records Repository of Last Resort.

(a) As a repository of last resort, the Coordinating Board will maintain a permanent repository for academic records from closed institutions previously authorized under a Certificate of Authorization or with provisional authority to operate.

(b) The Coordinating Board may transfer closed institution records to another entity to maintain and fulfill transcript requests as its designated closed institution academic custodian of record. The designated custodian of record will have the authority to provide transcripts and issue documentation of no records with the same authority as if issued by the Coordinating Board.

(c) Upon request and identity verification, the Coordinating Board or its designated custodian of record shall provide a student or a student-authorized third party with:

(1) A copy of the student's academic record as received; or

(2) Documentation indicating no records were found for the closed institution or the student.

(d) A fee may be charged to cover retrieval, reproduction, and mailing costs. If applicable, the designated custodian of record may set the fee.

(e) A statement will accompany the record noting:

(1) The institution's closure date, if available; and

(2) The record is unaltered and provided as received.

§7.184. Financial Protections for Student Tuition and Fees.

(a) Institutions operating under a Certificate of Authorization or a Provisional Certificate to Operate shall maintain financial protections to ensure students are reimbursed for unearned tuition and fees if the institution closes or violates minimum standards.

(1) The Coordinating Board sets a minimum amount for the surety instrument to cover administrative costs.

(2) Institutions which do not charge tuition or fees are required to submit the minimum amount for a surety instrument.

(3) Affected individuals, including students, parents or guardians, or another entity paying tuition and fees on behalf of the

student may make a claim based on a Qualifying Event under §7.185 of this subchapter (relating to Student Tuition and Fee Recovery Process).

(b) Institutions shall demonstrate financial protection through one or more of the following:

(1) Reserve funds;

(2) Lines of credit; or

(3) Surety instruments (e.g., surety bond, escrow account, certificate of deposit, irrevocable letter of credit, or a contract with a qualified third-party entity).

(c) Financial protections shall:

(1) Be in a form and amount approved by the Coordinating Board;

(2) Cover the maximum unearned tuition and fees for the longest academic term offered (e.g., semester, quarter) and administrative costs in distributing any qualified reimbursements. The Coordinating Board will provide a calculation template;

(3) Be conditioned to reimburse students, parents or guardians, or another entity paying tuition and fees on behalf of the student for losses due to school closure or violations of minimum standards; and

(4) Be held in Travis County, Texas, and accessible only by the Board for the benefit of affected students;

(d) The financial protection instrument shall be accompanied by a signed letter from an institution's authorized representative detailing:

(1) The method used to calculate the required financial protection amount; and

(2) Supporting documentation.

(e) Any falsification of financial documentation will be reported to the Attorney General under Subchapter K of this chapter (relating to Administrative Injunctions, Limitations, and Penalties).

§7.185. Student Tuition and Fee Recovery Process.

(a) In order to recover unearned tuition and fees, a Qualifying Event shall occur. The Coordinating Board will publish the date of a Qualifying Event, should one occur.

(b) A "Qualifying Event" occurs when a student, parent or guardian, or another entity paying tuition and fees on behalf of the student, suffers financial loss due to:

(1) An institution's closure; or

(2) A violation of minimum Board standards as provided in Subchapter B (relating to Standards for Operation of Postsecondary Educational Institutions).

(c) The Coordinating Board may withdraw the full amount of the institution's financial protection instrument if a Qualifying Event occurs.

(d) Affected individuals or entities shall submit a claim form provided by the Coordinating Board. A claim shall:

(1) Include supporting documents (e.g., enrollment agreements, transcripts, payment records); and

(2) Be submitted within 12-month claim period of the published Qualifying Event date.

(e) The Coordinating Board shall review claims within thirty days after the 12-month claim period ends.

(f) Refunds shall be issued based on verified tuition and fee losses.

(1) If total claims exceed available funds, refunds shall be prorated based on each claimant's verified loss.

(2) If available funds exceed total claims, the Board may retain an amount reasonably necessary to preserve, maintain, and provide access to student records.

(3) Any remaining funds shall be returned to the institution or its legal successor (e.g., receiver or trustee).

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SUBCHAPTER M. DISTANCE EDUCATION APPROVAL FOR DEGREE-GRANTING EDUCATIONAL INSTITUTIONS

19 TAC §§7.196 - 7.199

The new sections are proposed under Texas Education Code, Chapter 61, Subchapter G (§§61.301 - 61.321), which governs the regulation of private postsecondary educational institutions and public out-of-state postsecondary institutions operating in Texas. This includes Subchapter B (§61.026), related to advisory committees, Subchapter G (§61.314), relating to an advisory council on private postsecondary educational institutions, Subchapter H (§§61.401 - 61.405), relating to the regulation of academic terminology, and Texas Education Code, Chapter 132, which pertains to career schools and colleges.

The proposed new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 7.

§7.196. Applicability of Distance Education Exemption to Institution Outside of Texas.

An institution operating or located outside of Texas that intends to offer distance education, as defined under Subchapter A of this chapter (relating to General Provisions), to Texas residents, shall comply with this subchapter.

§7.197. Distance Education Exemption for Institution Outside of Texas.

(a) An out-of-state institution covered by a reciprocal state exemption agreement is exempt from Coordinating Board approval to offer distance education to Texas residents. The institution shall operate under the terms of the reciprocal state exemption agreement and be subject to all requirements under the agreement.

(b) An out-of-state institution not covered by a reciprocal state exemption agreement is exempt from Board approval if it meets the following:

(1) The institution is:

(A) accredited at the degree level by a Board-recognized accreditor;

(B) accredited at the degree level by an accreditor recognized by the U.S. Department of Education; or

(C) under the oversight of a Texas state agency for licensure training and authorizes graduates to take a professional or vocational state licensing examination administered by that agency.

(2) The institution has no physical presence in Texas, as defined in Subchapter A of this chapter (relating to General Provisions); and

(3) The institution agrees to comply with principles of best practice for distance education listed in §7.199 of this subchapter (relating to Principles of Best Practice for Distance Education).

(c) A distance education exemption applies only to the degree level for which the out-of-state institution is accredited.

(d) A distance education exemption remains valid only while the out-of-state institution continues to meet all criteria.

§7.198. Inapplicability of Distance Education Exemption.

(a) A previously exempt out-of-state institution shall apply for either a Certificate of Authorization or Provisional Certificate to Operate if:

(1) The institution loses accreditation;

(2) The institution establishes a physical presence in Texas; or

(3) The institution is no longer covered by a reciprocal state exemption agreement.

(b) An out-of-state institution is not exempt and shall obtain Board authorization under Subchapter F of this chapter (relating to Requirements for Application, Renewal, and Amendments to a Provisional Certificate to Operate) to offer distance education to Texas residents if it is not:

(1) Accredited at the degree level by a Board-recognized accreditor;

(2) Accredited at the degree level by an accreditor recognized by the U.S. Department of Education; or

(3) Under the oversight of a Texas state agency for licensure-related training and authorization of graduates to take a professional or vocational state licensing examination administered by that agency.

(c) An out-of-state institution offering both religious instruction degrees and non-religious instruction degrees is not exempt from Board approval to offer distance education to Texas residents unless it meets the requirements under §7.197 of this subchapter (relating to Distance Education Exemption for Institution Outside of Texas).

(d) An institution offering distance education from a location in Texas is not exempt and shall obtain Board authorization to offer degrees under either a Certificate of Authorization or a Provisional Certificate to Operate.

(e) A non-exempt institution offering distance education to Texas residents, in addition to obtaining Board authorization either under a Certificate of Authorization or a Provisional Certificate to Operate, shall comply with the principles of best practice for distance education listed in §7.199 of this subchapter (relating to Principles of Best Practice for Distance Education).

§7.199. Principles of Best Practice for Distance Education.

(a) All institutions offering distance education under this section shall meet the following best practices:

(1) Distance education aligns with the institution's mission;

(2) Distance education is integrated into institutional planning and evaluation;

(3) Governance and academic oversight include distance education programs;

(4) Distance education curricula are coherent, rigorous, and comparable to in-person programs:

(5) The institution evaluates and improves distance education effectiveness;

(6) Faculty are qualified and supported in delivering distance education;

(7) Students receive appropriate academic and support services for distance education:

(8) Resources are sufficient to support distance education offerings; and

(9) The institution ensures the integrity of its distance education programs.

(b) The Coordinating Board may request certification that the institution is in compliance with the requirements of this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER N. PARTICIPATION IN THE STATE AUTHORIZATION RECIPROCITY AGREEMENT (SARA)

19 TAC §§7.210 - 7.217

The new sections are proposed under Texas Education Code, Chapter 61, Subchapter G (§§61.301 - 61.321), which governs the regulation of private postsecondary educational institutions and public out-of-state postsecondary institutions operating in Texas. This includes Subchapter B (§61.026), related to advisory committees, Subchapter G (§61.314), relating to an advisory council on private postsecondary educational institutions, Subchapter H (§§61.401 - 61.405), relating to the regulation of academic terminology, and Texas Education Code, Chapter 132, which pertains to career schools and colleges.

The proposed new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 7.

§7.210. Purpose and Applicability.

(a) The purpose of this subchapter is to define the Coordinating Board's role in overseeing private or independent institutions of higher education and private postsecondary educational institutions that participate in State Authorization Reciprocity Agreements (SARA). This oversight ensures compliance with applicable state and federal laws, promotes quality standards, and protects students through coordinated authorization processes.

(b) This subchapter applies to private or independent institutions of higher education and private postsecondary educational institutions.

§7.211. Author.

This subchapter is adopted under the authority of Texas Education Code, §61.05121, which authorizes the Coordinating Board to manage the state's participation in SARA and to oversee compliance by participating institutions. The Coordinating Board is designated as the State Portal Entity (SPE) and will identify Coordinating Board staff to act as the SPE contact and SPE signatory.

§7.212. Eligibility Criteria.

(a) A private or independent institution of higher education or a private postsecondary educational institution, is eligible to apply for participation in SARA if its principal campus is located in Texas. Texas is considered the home state for these institutions.

(b) All distance education offered under SARA must originate from within the United States or a U.S. territory.

(c) The institution shall be accredited by an accrediting agency recognized by both the U.S. Department of Education and the Texas Higher Education Coordinating Board.

§7.213. Admission to SARA.

(a) Eligible institutions may apply to the Texas Higher Education Coordinating Board for participation in SARA.

(1) The application shall be signed by the institution's chief academic officer or chief executive officer and sent to the Coordinating Board, using the current institution application provided by NC-SARA to SARA institutional applicants.

(2) The institution shall pay the annual NC-SARA fee. This fee replaces individual state fees for SARA member states. Institutions shall still pay fees required by non-SARA states if offering distance education.

(3) The Coordinating Board shall review each application and determine whether to approve or deny participation based on state authorization requirements and SARA policy requirements.

(b) An institution participating in SARA is required to:

(1) Agree to follow principles of best practice for distance education in Subchapter M of this chapter (relating to Distance Education Approval for Degree-granting Educational Institutions);

(2) Accept responsibility for the actions of any third-party providers used in SARA-related activities;

(3) Notify the Coordinating Board of any adverse changes to its accreditation status;

(4) Provide data requested by the Coordinating Board;

(5) Cooperate with the Coordinating Board in resolving student complaints from other states and comply with the final resolution issued by the appropriate authority;

(6) Require students to follow the institution's internal complaint process before escalating to the Coordinating Board. Grade and conduct appeals are resolved solely at the institutional level;

(7) Inform students in programs that may lead to licensure whether the program meets licensure requirements in the student's state of residence. The institution must meet state, federal, and SARA policy requirements in notifying students of professional licensure eligibility.

(8) Offer a reasonable alternative or financial compensation if it cannot fully deliver the instruction for which a student has paid.

§7.214. Denial for SARA Participation.

(a) If the Coordinating Board denies an application to participate in SARA, the institution shall receive the denial via the SARA action and information page on the current SARA institutional application. The Coordinating Board shall provide a written explanation of the SARA policy requirements not met.

(b) Appeals of application denials shall be submitted within thirty calendar days to the Coordinating Board, who will issue a final decision.

(c) If the denial is upheld by the Coordinating Board, the Coordinating Board's decision is final, but the institution may appeal to the Southern Regional Education Board (SREB) to determine whether the Coordinating Board followed SARA procedures.

§7.215. Maintaining SARA Participation Eligibility.

(a) To remain eligible for participation in SARA, an institution shall:

(1) Submit a renewal application to the Coordinating Board each year and pay all required SARA fees.

(2) Continue to meet all SARA eligibility standards, including accreditation and compliance with applicable laws and guidelines.

(3) Be subject to review by Coordinating Board at the time of renewal to confirm continued compliance.

(b) Institutions may be removed from SARA participation at any time if found in violation of SARA standards or requirements.

§7.216. Complaint Resolution.

(a) Institutions participating in SARA shall clearly publish and make available their student complaint resolution policies and procedures, including providing information regarding the Coordinating Board's student complaint procedures and NC-SARA's complaint procedures.

(b) A student complaint related to distance education under SARA shall first be addressed through the institution's internal complaint process.

(c) If the student complainant is not satisfied with the institution's resolution, a student may file a complaint appeal with the Texas Higher Education Coordinating Board within two years of the incident.

(d) The Coordinating Board shall review the complaint appeal, determine an appropriate resolution, and notify both the complainant and the institution of the outcome.

§7.217. Out-of-State SARA Participants.

(a) The Coordinating Board serves as the primary point of contact for all SARA-related matters involving institutions based in other member states. Texas is considered the host state for these institutions.

(b) If an out-of-state SARA institution offers courses in Texas and appears to violate SARA policies or Texas general-purpose criminal or consumer protection laws, the Coordinating Board may take appropriate action.

(c) Out-of-state SARA participants shall be limited to no more than ten students from an individual academic program placed simultaneously at one clinical or practicum experiential learning site.

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CHAPTER 13. FINANCIAL PLANNING
SUBCHAPTER G. TUITION AND FEES

19 TAC §13.129

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter G, §13.129, concerning Refund of Tuition and Mandatory Fees at Public Junior Colleges, State Colleges, and Technical Institute.

The Coordinating Board is authorized by Texas Education Code, §130.009, to adopt rules relating to the uniform dates for adding or dropping a course.

Rule §13.129, Refund of Tuition and Mandatory Fees at Public Junior Colleges, State Colleges, and Technical Institute, is amended to provide additional clarity regarding the specific institutions that are subject to the rule and is retitled accordingly.

Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, has determined that for each of the first five years the section is in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rule. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the alignment between statute and agency rules. There are no anticipated economic costs to persons who are required to comply with the section as proposed.

Government Growth Impact Statement

(1) the rule will not create or eliminate a government program;

(2) implementation of the rule will not require the creation or elimination of employee positions;

(3) implementation of the rule will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rule will not require an increase or decrease in fees paid to the agency;

(5) the rule will not create a new rule;

(6) the rule will not limit an existing rule;

(7) the rule will not change the number of individuals subject to the rule; and

(8) the rule will not affect this state's economy.

Comments on the proposed rule or information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research or analysis, may be submitted to Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, P.O. Box 12788, Austin, Texas 78711-2788, or via email at SFAPPolicy@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 130.009, which provides the Coordinating Board with the authority to adopt rules relating to the uniform dates for adding or dropping a course.

The proposed amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter G.

§13.129. Refund of Tuition and Mandatory Fees at Public Junior Colleges[~~, State Colleges,~~] and Certain Technical Institutes [~~Institute~~].

(a) Authority. Authority for this section is Texas Education Code, §130.009.

(b) Applicability and Refund Schedule. This section applies only to [~~A~~] public junior colleges, as defined in §13.1 of this chapter (relating to Definitions), the Lamar Institute of Technology, and the Texas State Technical College System, collectively and herein "affected institutions." [~~college, public state college, or public technical institute, collectively public two-year college as defined in §13.1(29) of this chapter (relating to Definitions),~~] As [~~as~~] soon as practicable, affected institutions shall at a minimum refund tuition and mandatory fees in excess of the minimum tuition collected for courses from which the students drop or withdraw, according to the schedule provided in the Figure: 19 TAC §13.129(b).
Figure: 19 TAC §13.129(b) (No change.)

(1) An affected institution [~~A public two-year college~~] shall use the definition of "class day" in §13.1 of this chapter in applying the provisions of this subsection.

(2) An affected institution [~~A public two-year college~~] shall apply the percentages indicated in the Figure: 19 TAC §13.129(b) to the tuition and mandatory fees collected for each course from which the student is withdrawing.

(3) An affected institution [~~A public two-year college~~] may not delay a refund on the grounds that the student may withdraw from the affected institution [~~public two-year college~~] later in the semester or term.

(c) Prior to the census date, an affected institution [~~a public two-year college~~] may allow hours to be dropped and re-added without penalty to the student if the exchange is an equal one. When the charges for dropped hours are greater than for the hours added, the affected institution [~~public two-year college~~] shall apply the refund policy outlined in subsection (b) of this section for the net charges being dropped. If the charges for hours being added exceed the charges for hours being dropped, the student must pay the net additional charges.

(d) An affected institution [~~A public two-year college~~] shall refund tuition and mandatory fees paid by a sponsor, donor, or scholarship to the source rather than directly to the student who has withdrawn if the funds were made available through the affected institution [~~public two-year college~~].

(e) If a student withdraws because the student is called into active military service, the affected institution [~~public two-year college~~], at the student's option, shall:

(1) refund the tuition and fees paid by the student for the semester in which the student withdraws;

(2) grant a student, who is eligible under the affected institution's [~~public two-year college's~~] guidelines, an incomplete grade in all courses by designating "withdrawn-military" on the student's transcript; or

(3) as determined by the instructor, assign an appropriate final grade or credit to a student who has satisfactorily completed a substantial amount of course work and who has demonstrated sufficient mastery of the course material.

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SUBCHAPTER P. TUITION EXEMPTIONS AND WAIVERS

19 TAC §13.472

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter P, §13.472, concerning Educational Aide Exemption. Specifically, this amendment will clarify the manner by which the Coordinating Board will disburse and re-allocate, as applicable, allocated funds for the program. The Coordinating Board convened a negotiated rulemaking committee to consider the proposed amendments to the rule. The committee reached a general consensus on the proposal, and the proposed rule substantively reflects the committee's determinations. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

The Coordinating Board is authorized by Texas Education Code, §54.363, to adopt rules relating to the exemption.

Rule 13.472, Educational Aide Exemption, is amended by adding subsection (i), which describes by reference to §22.12 and §22.13 the method by which the Coordinating Board will disburse and re-allocate funding for this exemption to participating institutions.

Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, has determined that for each of the first five years the section is in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rule. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the improved transparency regarding the disbursement and re-allocation of state financial aid funding. There are no anticipated economic costs to persons who are required to comply with the section as proposed.

Government Growth Impact Statement

(1) the rule will not create or eliminate a government program;

(2) implementation of the rule will not require the creation or elimination of employee positions;

(3) implementation of the rule will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rule will not require an increase or decrease in fees paid to the agency;

(5) the rule will not create a new rule;

(6) the rule will not limit an existing rule;

(7) the rule will not change the number of individuals subject to the rule; and

(8) the rule will not affect this state's economy.

Comments on the proposed rule or information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research or analysis, may be submitted to Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, P.O. Box 12788, Austin, Texas 78711-2788, or via email at SFAPPolicy@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 54.363, which provides the Coordinating Board with the authority to adopt rules relating to the exemption.

The proposed amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 13, Subchapter P.

§13.472. Educational Aide Exemption.

(a) Authority. Authority for this section is provided in the Texas Education Code, §54.363.

(b) Definitions. In addition to the words and terms defined in §13.460 of this subchapter (relating to Definitions), the following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Educational Aide--A person who has been employed by a public school district in Texas in a teaching capacity working in the classroom directly with the students for at least one year on a full-time basis. It may include substitute teachers who have been employed by a public school district in Texas for 180 or more full days in a teaching capacity working in the classroom directly with students.

(2) Program--The Educational Aide Exemption Program.

(c) Eligible Institutions.

(1) Eligibility. Any institution of higher education, as defined in §13.1 of this chapter (relating to Definitions), is eligible to participate in the Program.

(2) Participation.

(A) Agreement. Each eligible institution must enter into an agreement with the Board, the terms of which shall be prescribed by the Commissioner, prior to indicating its intent to participate in the program.

(B) Intent to Participate. Subject to subsection (c)(2)(A), to receive an allocation for the forthcoming fiscal year, an eligible institution must indicate its intent to participate in the program in the applicable year in the manner prescribed and by the deadline established by the Coordinating Board.

(3) A participating institution shall offer an exemption under this section to a student meeting the eligibility requirements established in subsection (e) of this section, except that an institution is not required to offer exemptions beyond those funded through appropriations specifically designated for this purpose. An institution may establish criteria by which applicants are prioritized if appropriated funds are insufficient to offer an exemption to all eligible students for a given term.

(4) A participating institution shall use institutional matching funds to cover at least 10 percent of each recipient's exemption.

(d) Institutional Responsibilities. Institutions participating in the Program shall disburse funds in accordance with §22.2 of this title (relating to Timely Disbursement of Funds), retain records in accordance with §22.4 of this title (relating to Records Retention) and comply with the provisions of §22.9 of this title (relating to Institutional Responsibilities) with respect to the Program.

(e) Eligible Students. To be eligible to receive an exemption under this section, a student must:

(1) Submit a completed application for an exemption to the student's institution;

(2) Be a Resident of Texas, as defined in §22.1 of this title (relating to Definitions);

(3) Have met the definition of Educational Aide established in subsection (b) of this section at some time during the last five years preceding the term or semester for which the student would receive an initial exemption;

(4) Be employed in any capacity by a school district or open-enrollment charter school in Texas during the full term for which the student would receive the exemption;

(5) Show financial need, as defined in §13.460 of this subchapter;

(6) be enrolled at an eligible institution in courses required for teacher certification in one or more subject areas determined by the Commissioner of Education to be experiencing a critical shortage at the public schools of this state;

(7) meet the satisfactory academic progress requirements described by §13.463 of this subchapter (relating to Satisfactory Academic Progress) unless granted a hardship waiver by the institution in accordance with §13.464 of this subchapter (relating to Hardship Provisions); and

(8) meet applicable standards outlined in §22.3 of this title (relating to Student Compliance with Selective Service Registration).

(f) Notwithstanding subsection (e)(6) of this section, a student who previously received an exemption under this section remains [~~remain~~] eligible if the student:

(1) is enrolled at an eligible institution in courses required for teacher certification; and

(2) meets the eligibility requirements of subsection (e) of this section other than the requirement in subsection (e)(6).

(g) Exemption Amount. A student receiving an exemption under this section is exempt from the payment of resident tuition and required fees, other than laboratory and class fees, taken during the relevant term.

(h) Allocations. Allocations are to be determined on an annual basis as follows:

(1) All eligible institutions will be invited annually to participate in the program allocation process, as described by subsection (c)(2)(B) of this section.

(2) The annual appropriation will be divided equally between all participating institutions.

(3) Allocation calculations will be shared with all eligible institutions for comment prior to final posting. Institutions will be given 10 business days, beginning the day of the notice's distribution and excluding state holidays, to confirm their interest in participating in the program.

(i) Funds allocated to an institution under this section shall be disbursed and re-allocated, as applicable, in accordance with the provisions of §22.12 (relating to Disbursement of Allocated Funds) and §22.13 of this title (relating to Allocation Carry-Forward; Supplemental Allocations).

(j) [~~(i)~~] Exemption from Student Teaching. A person who has not previously received a baccalaureate degree and who receives a baccalaureate degree required for a teaching certificate on the basis of coursework completed while receiving an exemption under this section may not be required to participate in any field experience of internship consisting of student teaching to receive a teaching certificate.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2026.

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Douglas Brock
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6495

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CHAPTER 22. STUDENT FINANCIAL AID PROGRAMS
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §§22.1, 22.8, 22.11

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter A, §§22.1, 22.8, and 22.11, concerning General Provisions. Specifically, these amendments will create an alternative method of calculating financial need for certain students and establish additional procedures relating to institutions' authority to transfer limited amounts of allocated funds between certain financial aid programs.

The Coordinating Board is authorized by Texas Education Code, §56.0035, to adopt rules to carry out the purposes of that chapter.

Rule 22.1, Definitions, is amended by adding a new definition for "full-time, full-year cost of attendance" and amending the definition of "financial need." A student's Student Aid Index (SAI) is the output of the Free Application for Federal Student Aid (FAFSA) form and approximates a student's means for financing his/her own higher education. Most state financial aid programs are based upon the concept "financial need," which is calculated by subtracting a student's SAI from his/her cost of attendance (COA). When financial need is positive, a student becomes eligible for need-based aid and typically can receive funds up to that need amount.

However, the recent federal FAFSA Simplification Act eliminated institutions' ability to prorate a student's SAI, which previously was common practice, most notably for students who intend to graduate early (i.e., at the end of the fall semester in a typical academic year). For these students, cost of attendance is prorated due to their shortened enrollment in the academic year. Accordingly, these students, whose economic circumstances have not changed have been made ineligible for state aid with no change in state policy.

The amendments to this section allow for an alternative calculation of financial need for students who will not be enrolled for the entire academic year. Rather than using the student's actual cost of attendance, an institution may instead use the newly created "full-time, full-year cost of attendance," which is the basis for the calculation of a student's eligibility for the federal Pell Grant program. This change will allow for these students to be assessed for state aid eligibility on an equal basis to their peers.

Rule 22.8, Financial Aid Adjustments, is amended to describe situations in which an "over award" (a situation in which a student's total financial assistance exceeds the amount for which they are eligible) occurs for the student whose financial need is calculated using the full-time, full-year cost of attendance. For these students, an over award occurs if the student's total financial assistance exceeds either the student's actual cost of attendance (i.e., not the student's full-time, full-year cost of attendance) or, in a given semester, one-half of the student's financial need. This ensures that the alternative calculation of financial need, which is intended to ensure impacted students are assessed on an equal basis, does not create an advantage for those students with regard to their state aid eligibility.

Rule 22.11, Authority to Transfer Funds, is amended to create subsection (c), which establishes the circumstances in which the Coordinating Board may reverse all or part of a transfer. With the proposed addition of §22.13, which sets limits on the amount of unencumbered funds an institution may carry forward from the first to the second year of a biennium and establishes procedures for supplemental allocations using unencumbered funds in excess of that limit, subsection (c) ensures that unencumbered transferred funds are restored to their original funding source. Although this provision was considered outside the scope of the negotiated rulemaking committee convened by the Coordinating Board to consider proposed rule amendments regarding carry-forward provisions and supplemental allocations, it does reflect the committee's consensus view that the original funding source should dictate the supplemental allocation through which unencumbered funds should be distributed.

Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the consistent application of financial aid rules in light of changes in federal policy, as well as improved clarity and alignment regarding institutions' financial management of state financial aid funds. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposed rules or information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research or analysis, may be submitted to Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, P.O. Box 12788, Austin, Texas 78711-2788, or via email at SFAPPolicy@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, Section 56.0035, which provides the Coordinating Board with the authority to adopt rules to carry out the purposes of that chapter.

The proposed amendments affect Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter A.

§22.1. Definitions.

The following words and terms, when used in chapter 22, shall have the following meanings, unless otherwise defined in a particular subchapter:

(1) Academic Year--The combination of semesters defined by a public or private institution of higher education to fulfill the federal "academic year" requirement as defined by 34 CFR 668.3.

(2) Attempted Semester Credit Hours--Every course in every semester for which a student has been registered as of the official

Census Date, including but not limited to, repeated courses and courses the student drops and from which the student withdraws. For transfer students, transfer hours and hours for optional internship and cooperative education courses are included if they are accepted by the receiving institution towards the student's current program of study.

(3) Board--The governing body of the agency known as the Texas Higher Education Coordinating Board.

(4) Categorical Aid--Gift aid that the institution does not award to the student, but that the student brings to the school from a non-governmental third party.

(5) Commissioner--The Texas Commissioner of Higher Education.

(6) Coordinating Board--The agency known as the Texas Higher Education Coordinating Board, including agency staff.

(7) Cost of Attendance/Total Cost of Attendance--An institution's estimate of the expenses incurred by a typical financial aid recipient in attending a particular institution of higher education. It includes direct educational costs (tuition and fees) as well as indirect costs (room and board, books and supplies, transportation, personal expenses, and other allowable costs for financial aid purposes).

(8) Credit--College credit earned through the successful completion of a college career and technical education or academic course that fulfills specific requirements necessary to obtain an industry-recognized credential, certificate, associate degree, or other academic degree.

(9) Degree or Certificate Program of Four Years or Less--A baccalaureate degree, associate degree, or certificate program other than a program determined by the Coordinating Board to require four years or more to complete.

(10) Degree or Certificate Program of More Than Four Years--A baccalaureate degree or certificate program determined by the Coordinating Board to require more than four years to complete.

(11) Encumber--Program funds that have been officially requested by an institution through procedures developed by the Coordinating Board.

(12) Equivalent of a Semester Credit Hour--A unit of measurement for a continuing education course, determined as a ratio of one continuing education unit to ten contact hours of instruction, which may be expressed as a decimal. For the purpose of conversion, 1.6 continuing education units of instruction equals one semester credit hour of instruction. In a continuing education course, not fewer than sixteen contact hours are equivalent to one semester credit hour.

(13) Expected Family Contribution (EFC)--A student's Student Aid Index, as the term is defined in this section.

(14) Federal Pell Grant Student Aid Index Cap or Federal Pell Grant Eligibility Cap--The maximum Pell Grant amount allowed under federal law in a given fiscal year.

(15) Financial Need--The Cost of Attendance at a particular institution of higher education or private or independent institution of higher education less the Student Aid Index as those terms are defined in this section. For the purposes of verifying student eligibility and calculating financial aid amounts for programs under this chapter, an institution may calculate the financial need of a student who will not be enrolled for the entire academic year using the student's full-time, full-year cost of attendance, as defined in this section, subject to the limitations described in §22.8(b)(1)(B) of this subchapter (relating to Financial Aid Adjustments).

(16) Forecast--The FORECAST function in Microsoft Excel, or a comparable forecasting function.

(17) Full-Time--For undergraduate students, enrollment or expected enrollment for the equivalent of twelve or more semester credit hours per semester. For graduate students, enrollment or expected enrollment for the normal full-time course load of the student's program of study as defined by the institution.

(18) Full-Time, Full-Year Cost of Attendance--A student's cost of attendance, as defined in this section, calculated in a manner consistent with determining a student's annual award in the federal Pell Grant Program, as defined in 34 C.F.R. 690.2, based on full-time enrollment for a full academic year.

(19) [~~(18)~~] General Academic Teaching Institution--As defined in Texas Education Code, §61.003.

(20) [~~(19)~~] Gift Aid--Grants, scholarships, exemptions, waivers, and other financial aid provided to a student without a requirement to repay the funding or earn the funding through work.

(21) [~~(20)~~] Graduate Student--A student who has been awarded a baccalaureate degree and is enrolled in coursework leading to a graduate or professional degree.

(22) [~~(21)~~] Half-Time--For undergraduates, enrollment or expected enrollment for the equivalent of at least six but fewer than nine semester credit hours per regular semester. For graduate students, enrollment or expected enrollment for the equivalent of 50 percent of the normal full-time course load of the student's program of study as defined by the institution.

(23) [~~(22)~~] Institution of Higher Education--As defined by Texas Education Code, §61.003.

(24) [~~(23)~~] Medical or Dental Unit--As defined by Texas Education Code, §61.003.

(25) [~~(24)~~] Period of Enrollment--The semester or semesters within the current state fiscal year (September 1 - August 31) for which the student was enrolled in an approved institution and met all eligibility requirements for financial assistance offered under this chapter.

(26) [~~(25)~~] Private or Independent Institution of Higher Education--As defined by Texas Education Code, §61.003.

(27) [~~(26)~~] Program Officer--The individual named by each participating institution's chief executive officer to serve as agent for the Coordinating Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including the determination of student eligibility, selection of recipients, maintenance of all records, and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the institution's chief executive officer, the director of student financial aid shall serve as Program Officer.

(28) [~~(27)~~] Public Junior College--As defined by Texas Education Code, §61.003.

(29) [~~(28)~~] Public State College--As defined by Texas Education Code, §61.003.

(30) [~~(29)~~] Public Technical Institute--As defined by Texas Education Code, §61.003.

(31) [~~(30)~~] Resident of Texas--A resident of the State of Texas as determined in accordance with chapter 13, subchapter K, of this title (relating to Determination of Resident Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(32) [~~(31)~~] Semester--A payment period, as defined by 34 CFR 668.4(a) or 34 CFR 668.4(b)(1).

(33) [~~(32)~~] Semester Credit Hour--A unit of measure of instruction, represented in intended learning outcomes and verified by evidence of student achievement, that reasonably approximates one hour of classroom instruction or direct faculty instruction and a minimum of two hours out of class student work for each week over a 15-week period in a semester system or the equivalent amount of work over a different amount of time. An institution is responsible for determining the appropriate number of semester credit hours awarded for its programs in accordance with Federal definitions, requirements of the institution's accreditor, and commonly accepted practices in higher education.

(34) [~~(33)~~] Student Aid Index (SAI)--A measure utilized to calculate a student's financial need as regulated and defined by the methodology used for federal student financial aid.

(35) [~~(34)~~] Three-Quarter-Time--For undergraduate students, enrollment or expected enrollment for the equivalent of at least nine but fewer than twelve semester credit hours per semester. For graduate students, enrollment or expected enrollment for the equivalent of 75 percent of the normal full-time course load of the student's program of study as defined by the institution.

(36) [~~(35)~~] Undergraduate Student--An individual who has not yet received a baccalaureate degree.

§22.8. Financial Aid Adjustments.

(a) Withdrawal from Enrollment.

(1) Gift Aid. If a student officially withdraws from enrollment, then the institution shall reduce the student's gift aid by the same percentage by which the student's tuition has been reduced per the institution's general institutional refund policy.

(2) Loans. If a student officially withdraws from enrollment, the institution shall recalculate the student's cost of attendance to determine whether an adjustment to the student's state-funded loan aid is warranted.

(3) If the student withdraws or drops classes after the end of the institution's refund period, no refunds are due to the program(s) from which the student received financial assistance.

(b) Over Awards.

(1) An over award occurs when:

(A) a student's total financial assistance (including the student's state-funded and additional financial assistance) exceeds his/her financial need; or

(B) for students whose financial need was calculated using the student's full-time, full-year cost of attendance, as defined in §22.1 of this subchapter (relating to Definitions), a student's total financial assistance (including the student's state-funded and additional financial assistance) exceeds either:

(i) the student's cost of attendance, as defined in §22.1 of this subchapter; or

(ii) in any semester, one-half of the student's financial need.

(2) If an over award occurs, the institution shall resolve the over award by recalculating the student's amount of state-funded financial assistance in accordance with the institution's procedures, except the institution is not required to recalculate the student's financial aid if:

(A) the over award occurred after state-funded financial assistance has been disbursed because the student received additional financial assistance that was not factored into the institution's estimate of his/her financial need; and

(B) the student's total financial assistance exceeds his/her need by $300 or less.

(c) Ineligibility.

(1) If an institution determines that a student is ineligible for financial assistance from one or more programs in this chapter after receiving financial assistance from the program(s), the institution shall adjust the student's financial aid in accordance with the institution's procedures to either resolve the eligibility issue or remove the student from the program(s).

(2) An institution may distribute gift aid funds for which a student has been deemed ineligible to a different eligible student or return the funds to the Coordinating Board in accordance with §22.2(a)(2) of this subchapter (relating to Timely Distribution of Funds).

(d) If, for some reason not already specified in this section, the amount of a student's disbursement exceeds the amount the student is eligible to receive, the institution shall recalculate the student's financial aid accordingly.

§22.11. Authority to Transfer Funds.

(a) An institution participating in two or more of the following programs: Toward EXcellence, Access and Success Grant, Texas Educational Opportunity Grant, Tuition Equalization Grant, and Texas College Work-Study Programs, in accordance with instructions from the Coordinating Board, may transfer current fiscal year funds up to the lesser of 25 percent or $60,000 between these programs. This threshold applies to the program from which the funds are transferred.

(b) An institution shall submit a request for transfer under subsection (a) of this section by the annual deadline published by the Coordinating Board, and the transfer must occur by July 1 of the current fiscal year.

(c) If an institution transfers funds under this section in the first year of the biennium and, after the deadline described in §22.12(c) of this subchapter (relating to Disbursement of Allocated Funds), the program to which funds are transferred has unencumbered funds, the Coordinating Board shall reverse all or a portion of the transfer in an amount equal to the lesser of:

(1) The amount of unencumbered funds in the program to which funds were transferred; or

(2) The amount transferred.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2026.

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Douglas Brock
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: September 6, 2026
For further information, please call: (512) 427-6495

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19 TAC §22.12, §22.13

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new rules in Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter A, §22.12 and §22.13, concerning General Provisions. Specifically, these new sections will consolidate existing rules relating to the disbursement of allocated funds, establish new limitations on how allocated funds are carried forward within a legislative biennium, and codify Coordinating Board procedures relating to supplemental allocations. The Coordinating Board convened a negotiated rulemaking committee to consider the proposed rules. The committee reached a general consensus on the proposal, and the proposed rules substantively reflects the committee's determinations. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

The Coordinating Board is authorized by Texas Education Code, §56.0035 to adopt rules necessary to carry out the purposes of that chapter.

Rule 22.12, Disbursement of Allocated Funds, is created. The rule is substantively similar to rules that currently exist within the individual subchapters of applicable programs. Subsection (a) describes the rule's applicability. Subsection (b) describes the current process by which institutions encumber allocated funds by requesting them from the Coordinating Board and disburse them timely to eligible students. Subsection (c) describes how unencumbered funds are treated after the August 1 deadline to encumber funds each fiscal year; in the first year of the biennium, they are managed in accordance with §22.13, and in the second year of the biennium, they are made available to the Coordinating Board for utilization in financial aid processing.

Rule 22.13, Allocation Carry-Forward; Supplemental Allocation, is created. The rule describes how unencumbered funds in the first year of a legislative biennium are treated and re-allocated, as applicable. Subsection (a) describes the rule's applicability. Subsection (b) limits an institution's ability to carry funds forward from the first to the second year of the biennium to 10 percent of the institution's allocation for that program in the first year of the biennium. Under current rule, this carry-forward provision is unlimited. This has created situations in which an institution, for whatever reason, has difficulty using its full allocation in the first year of the biennium, resulting in a sizeable amount being carried forward to the next year. The institution is then unable to use its second-year allocation plus the sizeable carry-forward, and the funds return to the Coordinating Board in accordance with program rules. By the time these funds are returned to the Coordinating Board, however, it is too late to reallocate the funds to other institutions, and the funds are lapsed. The new 10-percent limit allows for strategic applications of the carry-forward provision (e.g. known increases in enrollment, compensating for year-over-year allocation variability, etc.) while limiting potential inefficiencies.

Subsection (c) specifies that funds in excess of the 10-percent limit on carry forwards are returned to the Coordinating Board for use in a supplemental allocation. Subsection (d) describes the supplemental allocation process, which will begin with institutions electing whether to receive a supplemental allocation. Following that election process, the Coordinating Board will conduct the supplemental allocation using each program's same allocation methodology, excluding any institutions that elected not to receive supplemental funds.

Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the improved efficiency in administration of state financial aid programs. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposed rules or information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research or analysis, may be submitted to Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, P.O. Box 12788, Austin, Texas 78711-2788, or via email at SFAPPolicy@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The new sections are proposed under Texas Education Code, Section 56.0035, which provides the Coordinating Board with the authority to adopt rules necessary to carry out the purposes of that chapter.

The proposed new sections affect Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter A.

§22.12. Disbursement of Allocated Funds.

(a) Applicability. Unless otherwise specified, the provisions of this section apply to any financial aid program administered under Chapter 13, Subchapter P (relating to Tuition Exemptions and Waivers) or Chapter 22 (relating to Student Financial Aid Programs) of this title for which the Coordinating Board allocates appropriated funds to participating institutions, except that the provisions of this section do not apply to the programs administered under Subchapter N (relating to Texas Leadership Scholars Program) or Subchapter O (relating to Texas Leadership Research Scholars Program) of this chapter.

(b) Upon request by an institution throughout the academic year, the Coordinating Board shall forward to each participating institution a portion of its allocation of funds for a program for timely disbursement to students in accordance with §22.2 of this subchapter (relating to Timely Distribution of Funds). Pursuant to §22.1 of this subchapter (relating to Definitions), funds that are officially requested by an institution in accordance with Coordinating Board Procedures are considered encumbered.

(c) An institution will have until the close of business on August 1, or the first working day thereafter if it falls on a weekend or holiday, to encumber program funds for the current fiscal year from their allocation for each applicable program. After that date, an institution may not encumber any additional funds in the current fiscal year.

(1) Unencumbered funds in the first year of the biennium shall be managed in accordance with the provisions of §22.13 of this subchapter (relating to Allocation Carry-Forward; Supplemental Allocations).

(2) Unencumbered funds in the second year of the biennium become available to the Coordinating Board for utilization in financial aid processing.

§22.13. Allocation Carry-Forward; Supplemental Allocations.

(a) Applicability. Unless otherwise specified, the provisions of this section apply to any financial aid program administered under Chapter 13, Subchapter P (relating to Tuition Exemptions and Waivers) or Chapter 22 (relating to Student Financial Aid Programs) of this title for which the Coordinating Board allocates appropriated funds to participating institutions, except that the provisions of this section do not apply to the programs administered under Subchapter N (relating to Texas Leadership Scholars Program) or Subchapter O (relating to Texas Leadership Research Scholars Program) of this chapter.

(b) Carry-Forward. Unless otherwise specified in the General Appropriations Act, unencumbered funds under §22.12(c) of this subchapter (relating to Disbursement of Allocated Funds) from the first year of the biennium shall be carried forward for use in the same program during the second year of the biennium, in an amount not to exceed 10 percent of the institution's allocation for the respective program for the first year of the biennium.

(c) Any unencumbered funds in excess of 10 percent of the institution's allocation for the first year of the biennium shall become available to the Coordinating Board for use in a supplemental allocation under subsection (d) of this section.

(d) Supplemental Allocation.

(1) During the fall semester of the second year of the biennium, the Coordinating Board shall conduct a supplemental allocation using funds made available to Coordinating Board under subsection (c) of this section, in addition to any other funds identified for this purpose.

(2) Prior to conducting a supplemental allocation for a program under this section, the Coordinating Board shall allow participating institutions in that program to elect whether they would like to receive a supplemental allocation for that program.

(3) The Coordinating Board shall conduct a supplemental allocation for a program using the allocation methodology outlined in the respective program's rules, except that institutions that elect not to receive a supplemental allocation under paragraph (2) of this subsection shall be excluded from the calculation.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Douglas Brock
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Texas Higher Education Coordinating Board
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SUBCHAPTER B. TUITION EQUALIZATION GRANT PROGRAM

19 TAC §22.30

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter B, §22.30, concerning Disbursement of Funds. Specifically, this amendment will clarify the manner by which the Coordinating Board will disburse and re-allocate, as applicable, allocated funds for the Program. The Coordinating Board convened a negotiated rulemaking committee to consider the proposed amendments to the rule. The committee reached a general consensus on the proposal, and the proposed rule substantively reflects the committee's determinations. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

The Coordinating Board is authorized by Texas Education Code, §61.229, to adopt rules relating to the Program.

Rule 22.30, Disbursement of Funds, is amended by replacing existing rule text with references to §22.12 and §22.13 to describe the method by which the Coordinating Board will disburse and re-allocate funding for this program to participating institutions.

Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, has determined that for each of the first five years the section is in effect, there would be no fiscal implications for state or local governments as a result of enforcing or administering the rule. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the improved transparency regarding the disbursement and re-allocation of state financial aid funding. There are no anticipated economic costs to persons who are required to comply with the section as proposed.

Government Growth Impact Statement

(1) the rule will not create or eliminate a government program;

(2) implementation of the rule will not require the creation or elimination of employee positions;

(3) implementation of the rule will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rule will not require an increase or decrease in fees paid to the agency;

(5) the rule will not create a new rule;

(6) the rule will not limit an existing rule;

(7) the rule will not change the number of individuals subject to the rule; and

(8) the rule will not affect this state's economy.

Comments on the proposed rule or information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research or analysis, may be submitted to Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, P.O. Box 12788, Austin, Texas 78711-2788, or via email at SFAPPolicy@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Section 61.229, which provides the Coordinating Board with the authority to adopt rules relating to the Program.

The proposed amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter B.

§22.30. Disbursement of Funds.

Funds allocated to an institution under this subchapter shall be disbursed and re-allocated, as applicable, in accordance with the provisions of §22.12 (relating to Disbursement of Allocated Funds) and §22.13 of this chapter (relating to Allocation Carry-Forward; Supplemental Allocations). [~~As requested by institutions throughout the academic year, the Coordinating Board shall forward to each participating institution a portion of its allocation of funds for timely disbursement to students in accordance with §22.2 of this chapter (relating to Timely Distribution of Funds). Institutions will have until the close of business on August 1, or the first working day thereafter if it falls on a weekend or holiday, to encumber program funds from their allocation. After that date, institutions lose claim to any funds in the current fiscal year not yet drawn down from the Coordinating Board for timely disbursement to students. Funds released in this manner in the first year of the biennium become available to the institution for use in the second year of the biennium. Funds released in this manner in the second year of the biennium become available to the Board's program for utilization in grant processing. Should these unspent funds result in additional funding available for the next biennium's program, revised allocations, calculated according to the allocation methodology specified in §22.29 of this subchapter (relating to Allocation of Funds), will be issued to participating institutions during the fall semester.~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER G. TEXAS COLLEGE WORK-STUDY PROGRAM

19 TAC §22.135

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter G, §22.135, concerning Disbursement of Funds. Specifically, this amendment will clarify the manner by which the Coordinating Board will disburse and re-allocate, as applicable, allocated funds for the Program. The Coordinating Board convened a negotiated rulemaking committee to consider the proposed amendments to the rule. The committee reached a general consensus on the proposal, and the proposed rule substantively reflects the committee's determinations. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

The Coordinating Board is authorized by Texas Education Code, §56.077, to adopt rules relating to the Program.

Rule 22.135, Disbursement of Funds, is amended by replacing existing rule text with references to §22.12 and §22.13 to describe the method by which the Coordinating Board will disburse and re-allocate funding for this program to participating institutions.

Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, has determined that for each of the first five years the section is in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rule. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the improved transparency regarding the disbursement and re-allocation of state financial aid funding. There are no anticipated economic costs to persons who are required to comply with the section as proposed.

Government Growth Impact Statement

(1) the rule will not create or eliminate a government program;

(2) implementation of the rule will not require the creation or elimination of employee positions;

(3) implementation of the rule will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rule will not require an increase or decrease in fees paid to the agency;

(5) the rule will not create a new rule;

(6) the rule will not limit an existing rule;

(7) the rule will not change the number of individuals subject to the rule; and

(8) the rule will not affect this state's economy.

Comments on the proposed rule or information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research or analysis, may be submitted to Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, P.O. Box 12788, Austin, Texas 78711-2788, or via email at

SFAPPolicy@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendment is proposed under Texas Education Code, Section 56.077, which provides the Coordinating Board with the authority to adopt rules relating to the Program.

The proposed amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 22.

§22.135. Disbursement of Funds.

Funds allocated to an institution under this subchapter shall be disbursed and re-allocated, as applicable, in accordance with the provisions of §22.12 (relating to Disbursement of Allocated Funds) and §22.13 of this chapter (relating to Allocation Carry-Forward; Supplemental Allocations).

[~~(a) As requested by institutions throughout the academic year, the Coordinating Board shall forward to each participating institution a portion of its allocation of funds for timely disbursement to students.~~]

[~~(b) Institutions will have until the close of business on August 1, or the first working day thereafter if it falls on a weekend or holiday, to encumber program funds from their allocation for timely disbursement to students. After that date, institutions lose claim to any funds in the current fiscal year not yet drawn down from the Board for timely disbursement to students.~~]

[~~(c) Funds released in this manner in the first year of the biennium become available to the institution for use in the second year of the biennium. Funds released in this manner in the second year of the biennium become available to the Coordinating Board for utilization in financial aid processing.~~]

[~~(d) Should these unspent funds result in additional funding available for the next year's program, revised allocations, calculated according to the allocation methodology outlined in this subchapter, will be issued to participating institutions during the fall semester.~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER L. TOWARD EXCELLENCE, ACCESS, AND SUCCESS (TEXAS) GRANT PROGRAM

19 TAC §§22.226, 22.228, 22.238

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter L, §§22.226, 22.228 and 22.238, concerning the Toward EXcellence, Access, and Success (TEXAS) Grant Program. Specifically, this amendment will clarify the manner by which the Coordinating Board will disburse and re-allocate, as applicable, allocated funds for the Program. The Coordinating Board convened a negotiated rulemaking committee to consider the proposed amendments to §22.238. The committee reached a general consensus on the proposal, and the proposed rule substantively reflects the committee's determinations. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

The Coordinating Board is authorized by Texas Education Code, §56.303, to adopt rules relating to the Program.

Rule 22.226, Definitions, is amended by removing a reference to dual enrollment in the definition of "entering undergraduate." This is a conforming change with concurrent amendments to Coordinating Board rules and does not represent a change in the administration of the Program.

Rule 22.228, Eligible Students, is amended to clarify that a student qualifying for a grant under §22.228(6)(C) must receive an associate degree from an institution of higher education or private or independent institution of higher education, aligning more closely with the Program's statute. This does not represent a change in the administration of the Program.

The Coordinating Board convened a negotiated rulemaking committee to consider proposed amendments to §22.238. The committee reached a general consensus on the proposal, and the proposed rule substantively reflects the committee's determinations.

Rule 22.238, Disbursement of Funds, is amended by replacing existing rule text with references to §22.12 and §22.13 to describe the method by which the Coordinating Board will disburse and re-allocate funding for this program to participating institutions.

Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the improved transparency regarding the disbursement and re-allocation of state financial aid funding. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposed rules or information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research or analysis, may be submitted to Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, P.O. Box 12788, Austin, Texas 78711-2788, or via email at SFAPPolicy@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under Texas Education Code, Section 56.303, which provides the Coordinating Board with the authority to adopt rules relating to the Program.

The proposed amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter L.

§22.226. Definitions.

In addition to the words and terms defined in §22.1 of this chapter (relating to Definitions), the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Entering Undergraduate--A student enrolled in the first thirty semester credit hours or their equivalent, excluding hours taken during [~~dual enrollment in~~] high school and courses for which the student received credit through examination.

(2) Initial Year Grant--The TEXAS Grant offered in the student's first year in the TEXAS Grant Program.

(3) Nontraditional Secondary Education--A course of study at the secondary school level in a nonaccredited private school setting, including a home school.

(4) Priority Student Aid Index Level--An amount calculated annually by the Coordinating Board equal to 60 percent of the average statewide amount of tuition and required fees for resident students enrolled full-time in baccalaureate degree programs at general academic teaching institutions, excluding public state colleges, for the relevant academic year.

(5) Prior-Prior Year--For allocation purposes, the state fiscal year that began two years earlier than the fiscal year for which the allocation is being calculated.

(6) Program--The Toward EXcellence, Access and Success (TEXAS) Grant program.

(7) Renewal Grant--A TEXAS Grant offered to a person who has previously received an initial year grant.

(8) Required Fees--A mandatory fee (required by statute) or discretionary fee (authorized by statute, imposed by the governing board of an institution of higher education) and that an institution of higher education charges to a student as a condition of enrollment at the institution of higher education or in a specific course.

(9) Target Grant Amount--An amount set by the Coordinating Board, in consultation with institutions of higher education participating in the TEXAS Grant Program, and used as the recommended average grant amount for the TEXAS Grant Program for a biennium and in establishing renewal grant and initial year grant for top 25 percent student allocations to participating institutions of higher education as described in §22.236(a)(1) and (2) of this chapter (relating to Allocation of Funds - General).

(10) Tuition--Statutory tuition, designated and/or Board-authorized tuition, as defined in §13.121 of this title (related to Definitions).

§22.228. Eligible Students.

(a) Initial Grants. To be eligible to receive an initial year grant, a person must:

(1) be enrolled in a baccalaureate program at a participating institution;

(2) be a resident of Texas, as defined in §22.1 of this chapter (relating to Definitions);

(3) show financial need, as defined in §22.1 of this chapter;

(4) have applied for financial aid through the completion of the Federal Application for Federal Student Aid or, if the student is not eligible for federal financial aid, the Texas Application for State Financial Aid;

(5) meet applicable standards outlined in §22.3 of this chapter (relating to Student Compliance with Selective Service Registration); and

(6) Except as provided under §22.231 of this subchapter (relating to Hardship Provisions), to receive an initial year grant, an otherwise eligible person must enroll in a baccalaureate degree program at a participating institution on at least a three-quarter time basis as:

(A) an entering undergraduate student not later than the end of the sixteenth month after the calendar month in which the person graduated from high school or successfully completed a nontraditional secondary education, as defined in §22.226 of this subchapter (relating to Definitions);

(B) an entering undergraduate student who entered military service not later than the first anniversary of the date of high school graduation and enrolled in an eligible institution no later than twelve months after being released from active duty military service with an Honorable Discharge, General Discharge under Honorable Conditions, or Honorable Separation or Release from Active Duty, as documented by the Certificate of Release or Discharge from Active Duty (DD214) issued by the Department of Defense;

(C) an undergraduate student not later than the end of the twelfth month after the calendar month in which the student received an associate degree from an institution of higher education or private or independent institution of higher education, as the terms are defined in §22.1 of this chapter; or

(D) an undergraduate student who has:

(i) previously attended another institution of higher education, as defined in §22.1 of this chapter;

(ii) received an initial Texas Educational Opportunity Grant under subchapter M of this chapter (relating to Texas Educational Opportunity Grant Program) for the 2014 fall semester or a subsequent semester;

(iii) completed at least twenty-four semester credit hours at any institution(s) of higher education or private or independent institution(s) of higher education, as defined in §22.1 of this chapter;

(iv) earned an overall grade point average of at least 2.5 on a four-point scale or the equivalent on all course work previously attempted; and

(v) never previously received a TEXAS Grant.

(b) Renewal Grants. To be eligible to receive a renewal grant through the TEXAS Grant Program, a student must:

(1) have previously received an initial year grant through this Program;

(2) show financial need, as defined in §22.1 of this chapter;

(3) be enrolled at least three-quarter time unless granted a hardship waiver of this requirement under §22.231 of this subchapter (relating to Hardship Provisions);

(4) be enrolled in a baccalaureate program at a participating institution;

(5) make satisfactory academic progress towards a baccalaureate degree at the participating institution, as defined in §22.229 of this subchapter (relating to Satisfactory Academic Progress); and

(6) meet applicable standards outlined in §22.3 of this chapter (relating to Student Compliance with Selective Service Registration).

(c) If a student's eligibility was based on the expectation that the student would complete a high school diploma or associate degree in time to meet the requirements for Program eligibility, and the student failed to do so, then, in order to resume eligibility, such a student must:

(1) receive an associate degree;

(2) meet all other qualifications for a TEXAS Grant;

(3) if required to do so by the institution through which the TEXAS Grant was made, repay the amount of the TEXAS Grant that was previously received; and

(4) enroll in a higher-level undergraduate degree program at a participating institution not later than the twelfth month after the month the student received an associate degree.

(d) For the purposes of this section, a student enrolled in a combined baccalaureate-master's degree program is considered to be enrolled in a baccalaureate program during the period in which the student's institution considers the student an undergraduate for federal financial aid purposes.

§22.238. Disbursement of Funds.

Funds allocated to an institution under this subchapter shall be disbursed and re-allocated, as applicable, in accordance with the provisions of §22.12 (relating to Disbursement of Allocated Funds) and §22.13 of this chapter (relating to Allocation Carry-Forward; Supplemental Allocations). [~~As requested by an institution throughout the academic year, the Coordinating Board shall forward to each participating institution a portion of its allocation of funds for timely disbursement to students in accordance with §22.2 of this chapter (relating to Timely Disbursement of Funds). An institution will have until the close of business on August 1, or the first working day thereafter if it falls on a weekend or holiday, to encumber program funds from their allocation. After that date, an institution shall lose claim to any funds in the current fiscal year not yet drawn down from the Coordinating Board for timely disbursement to students. Funds released in this manner in the first year of the biennium become available to the institution for use in the second year of the biennium. Funds released in this manner in the second year of the biennium become available to the Coordinating Board for utilization in grant processing. Should these unspent funds result in additional funding available for the next biennium's program, revised allocations, calculated according to the allocation methodology outlined in this rule, will be issued to participating institutions during the fall semester.~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER M. TEXAS EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19 TAC §§22.254, 22.261, 22.265

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter M, §§22.254, 22.261 and 22.265, concerning Texas Educational Opportunity Grant Program. Specifically, this amendment will clarify the manner by which the Coordinating Board will disburse and re-allocate, as applicable, allocated funds for the Program. The Coordinating Board convened a negotiated rulemaking committee to consider the proposed amendments to §22.265. The committee reached a general consensus on the proposal, and the proposed rule substantively reflects the committee's determinations. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

The Coordinating Board is authorized by Texas Education Code, §56.403, to adopt rules relating to the Program.

Rule 22.254, Definitions, is amended by removing a reference to dual enrollment in the definition of "entering undergraduate." This is a conforming change with concurrent amendments to Coordinating Board rules and does not represent a change in the administration of the Program.

Rule 22.261, Grant Amount, is amended to clarify that the Lamar Institute of Technology, which is statutorily both a public state college and a public technical institute under Texas Education Code, §61.003, is considered a public state college for program purposes. This does not represent a change in administration of the Program.

Rule 22.265, Disbursement of Funds to Institutions, is amended by replacing existing rule text with references to §22.12 and §22.13 to describe the method by which the Coordinating Board will disburse and re-allocate funding for this program to participating institutions. The rule is retitled to conform with naming conventions for similar rules elsewhere in the chapter.

Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the improved transparency regarding the disbursement and re-allocation of state financial aid funding. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will not create or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposed rules or information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research or analysis, may be submitted to Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, P.O. Box 12788, Austin, Texas 78711-2788, or via email at SFAPPolicy@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, Section 56.403, which provides the Coordinating Board with the authority to adopt rules relating to the Program.

The proposed amendments affect Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter M.

§22.254. Definitions.

In addition to the words and terms defined in §22.1 of this chapter (relating to Definitions), the following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Career and Technical Education Course--A workforce or continuing education college course offered by an institution of higher education for which a student may earn credit toward satisfaction of a requirement necessary to obtain an industry-recognized credential, certificate, or associate degree.

(A) A career and technical education course is listed in the Workforce Education Course Manual (WECM).

(B) For the purpose of this subchapter, this definition excludes:

(i) an avocational course;

(ii) a continuing education course that is ineligible for conversion as articulated college credit; and

(iii) a continuing education course that does not meet the institution's program or instructor accreditation standards.

(2) Certificate Program--For purposes of the Texas Educational Opportunity Grant Program, Level 1 and Level 2 certificates, Occupational Skills Awards, and other credentials of value as defined in §13.472 of this title (relating to Definitions). These include programs offered through academic courses or through career and technical education courses, as defined in paragraph (1) of this subsection.

(3) Continuation Grant--A grant offered to a person who has previously received an initial year grant.

(4) Entering undergraduate--A student enrolled in the first 45 semester credit hours or their equivalent, excluding hours taken during [~~dual enrollment in~~] high school and courses for which the student received credit through examination.

(5) Grant--Funds offered to a student through the Texas Educational Opportunity Grant Program.

(6) Initial Year Grant--The grant offered in the student's first year in the Program.

(7) Program--The Texas Educational Opportunity Grant Program.

§22.261. Grant Amounts.

(a) Grant Amounts.

(1) The Coordinating Board shall determine and announce the maximum grant amount in a given state fiscal year by January 31 of the prior fiscal year. The calculation of the maximum grant amount for a semester will be based on the average statewide amount of tuition and required fees at eligible institutions that a resident student enrolled full-time in an associate degree or certificate program measured in semester credit hours would be charged for that semester (Texas Education Code, §56.407).

(2) In the Coordinating Board's determination of the maximum grant amount, the average amount of tuition and required fees is determined by institution type (public junior colleges, public state colleges, and public technical institutes), utilizing the most recent Integrated Fiscal Reporting System reports to project the value.

(3) Institutional Classifications. For the purposes of this section:

(A) The Polytechnic College at Sam Houston State University is considered a public technical institute [~~for this purpose~~].

(B) Lamar Institute of Technology is considered a public state college.

(b) The amount of a grant offered by the institution may not be reduced by any gift aid for which the person receiving the grant is eligible, unless the total amount of a person's grant plus any gift aid received exceeds the student's cost of attendance. However, no student's grant shall be greater than the amount of the student's financial need.

(c) A participating institution may not charge a person receiving a grant through that institution an amount of tuition and required fees in excess of the grant received by the person. Nor may it deny admission to or enrollment in the institution based on a person's eligibility to receive or actual receipt of a grant. If an institution's tuition and fee charges exceed the grant, it may address the shortfall in one of two ways:

(1) use other available sources of financial aid to cover any difference in the amount of the grant and the student's actual amount

of tuition and required fees at the institution, provided that the other available sources of financial aid do not include a loan; or

(2) exempt the excess charges for the student. However, if an exemption is used, the institution may not report the recipient's tuition and fees in a way that would increase the general revenue appropriations to the institution.

(d) Grant calculations are to be completed in accordance with §22.8 of this chapter (relating to Financial Aid Adjustments).

§22.265. Disbursement of Funds [~~to Institutions~~].

Funds allocated to an institution under this subchapter shall be disbursed and re-allocated, as applicable, in accordance with the provisions of §22.12 (relating to Disbursement of Allocated Funds) and §22.13 of this chapter (relating to Allocation Carry-Forward; Supplemental Allocations). [~~As requested by institutions throughout the academic year, the Coordinating Board shall forward to each participating institution a portion of its allocation of funds for timely disbursement to students in accordance with §22.2 of this chapter (relating to Timely Disbursement of Funds). Institutions will have until the close of business on August 1, or the first working day thereafter if it falls on a weekend or holiday, to encumber program funds from their allocation. After that date, institutions lose claim to any funds in the current fiscal year not yet drawn down from the Coordinating Board for timely disbursement to students. Funds released in this manner in the first year of the biennium become available to the institution for use in the second year of the biennium. Funds released in this manner in the second year of the biennium become available to the Coordinating Board for utilization in grant processing. Should these unspent funds result in additional funding available for the next biennium's program, revised allocations, calculated according to the allocation methodology outlined in this rule, will be issued to participating institutions during the fall semester.~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Douglas Brock
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SUBCHAPTER R. NURSING STUDENTS SCHOLARSHIP PROGRAM

19 TAC §§22.367 - 22.369

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter R, §§22.367 - 22.369, concerning Nursing Students Scholarship Program. Specifically, this amendment will clarify the manner by which the Coordinating Board will disburse and re-allocate, as applicable, allocated funds for the program. The Coordinating Board convened a negotiated rulemaking committee to consider the proposed amendments to §22.368 and §22.369. The committee reached a general consensus on the proposal, and the proposed rule substantively reflects the committee's determinations. The Coordinating Board will make reports of negotiated rulemaking committees available upon request.

The Coordinating Board is authorized by Texas Education Code, §61.656, to adopt rules relating to the Program.

Rule 22.367, Scholarship Amount, is amended to correct an erroneous citation in subsection (a)(1). This does not represent a change in the administration of the Program.

Rule 22.368, Allocation of Funds, is amended by adding subsection (c), so the structure of the program rules conforms to other subchapters in the chapter. The added subsection is identical to current §22.369(b).

Rule 22.369, Disbursement of Funds, is amended by replacing existing rule text with references to §22.12 and §22.13 to describe the method by which the Coordinating Board will disburse and re-allocate funding for this program to participating institutions. As noted previously, subsection (b) is relocated to §22.368(c).

Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, has determined that for each of the first five years the sections are in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rules. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rules. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the improved transparency regarding the disbursement and re-allocation of state financial aid funding. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Government Growth Impact Statement

(1) the rules will notcreate or eliminate a government program;

(2) implementation of the rules will not require the creation or elimination of employee positions;

(3) implementation of the rules will notrequire an increase or decrease in future legislative appropriations to the agency;

(4) the rules will not require an increase or decrease in fees paid to the agency;

(5) the rules will not create a new rule;

(6) the rules will not limit an existing rule;

(7) the rules will not change the number of individuals subject to the rule; and

(8) the rules will not affect this state's economy.

Comments on the proposed rules or information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research or analysis, may be submitted to Andy MacLaurin, Assistant Commissioner for Funding and Financial Aid, P.O. Box 12788, Austin, Texas 78711-2788, or via email at SFAPPolicy@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendments are proposed under Texas Education Code, Section 61.656, which provides the Coordinating Board with the authority to adopt rules relating to the Program.

The proposed amendments affects Texas Administrative Code, Title 19, Part 1, Chapter 22, Subchapter R.

§22.367. Scholarship Amount.

(a) Scholarship Amount. Each state fiscal year, the maximum scholarship amount per semester shall be:

(1) for institutions eligible to offer grants through the Texas Educational Opportunity Grant Program, the maximum grant amount established in §22.261(a) [~~§22.261(b)~~] of this chapter (relating to Grant Amounts);

(2) for institutions eligible to offer grants through the Toward EXcellence, Access, and Success (TEXAS) Grant Program, the maximum grant amount established in §22.234(b) of this chapter (relating to Grant Amounts); or

(3) for institutions eligible to offer grants through the Tuition Equalization Grant Program or an institution described by Texas Education Code, §61.651(1)(C), one half of the maximum grant amount established in §22.28(a)(3)(A) of this chapter (relating to Award Amounts and Adjustments).

(b) The amount of a scholarship plus any other gift aid may not exceed the student's financial need.

(c) For an eligible student who also is a Texas Educational Opportunity Grant or Toward EXcellence, Access, and Success (TEXAS) Grant recipient, a scholarship offered under this subchapter may not be used as financial aid to meet the requirements of §22.261(c) (for TEOG recipients) or §22.234(c) (for TEXAS Grant recipients) of this chapter (relating to Grant Amounts respectively).

§22.368. Allocation of Funds.

(a) Allocations. Allocations are to be determined as follows:

(1) Each institution's percent of the available funds will equal the ratio of its institutional need to the state-wide need.

(2) An institution's institutional need is calculated by multiplying:

(A) the number of students it reported in the most recent certified Financial Aid Database submission who met the following criteria:

(i) were classified as Texas residents;

(ii) were enrolled in a vocational or professional nursing program on at least a half-time basis; and

(iii) have a 9-month Expected Family Contribution, calculated using federal methodology, less than or equal to the Federal Pell Grant eligibility cap for the year reported in the Financial Aid Database submission; and

(B) the institution's maximum scholarship amount, as determined by the Coordinating Board under §22.367(a) of this subchapter (relating to Scholarship Amount).

(3) The state-wide need is calculated as the sum of all eligible institutions' institutional need.

(4) Allocations for both years of the state appropriations' biennium will be completed at the same time. The three most recent certified Financial Aid Database submissions will be used to forecast the data utilized in the calculation of the allocation for the second year of the biennium. Institutions will receive notification of their allocations for both years of the biennium at the same time.

(5) Notwithstanding subsection (a)(4) of this section, allocations for Fiscal Year 2025 will be based on the most recent certified Financial Aid Database submission.

(6) Allocation calculations will be shared with all participating institutions for comment and verification prior to final posting and the institutions will be given ten (10) working days, beginning the day of the notice's distribution and excluding State holidays, to confirm that the allocation report accurately reflects the data they submitted or to notify the Coordinating Board in writing of any inaccuracies.

(b) Limited Allocation for Certain Institutions. Notwithstanding the allocation methodology established in subsection (a) of this section, an institution described by Texas Education Code, §61.651(1)(C), may not receive more than ten (10) percent of the total amount of scholarship funds allocated in a fiscal year. Excess funds that would otherwise be allocated to such an institution will instead be allocated to the remaining eligible institutions according to the allocation methodology established in subsection (a) of this section.

(c) Reductions in Funding.

(1) If annual funding for the program is reduced after the start of a fiscal year, the Coordinating Board may take steps to help distribute the impact of reduced funding across all participating institutions by an across-the-board percentage decrease in all institutions' allocations.

(2) If annual funding is reduced prior to the start of a fiscal year, the Coordinating Board may recalculate the allocations according to the allocation methodology outlined in this rule for the affected fiscal year based on available dollars.

§22.369. Disbursement of Funds.

Funds allocated to an institution under this subchapter shall be disbursed and re-allocated, as applicable, in accordance with the provisions of §22.12 (relating to Disbursement of Allocated Funds) and §22.13 of this chapter (relating to Allocation Carry-Forward; Supplemental Allocations).

[~~(a) Disbursement of Funds to Institutions. As requested by institutions throughout the academic year, the Coordinating Board shall forward to each participating institution a portion of its allocation of funds for timely disbursement to students. Institutions will have until the close of business on August 1, or the first working day thereafter if it falls on a weekend or holiday, to encumber program funds from their allocation. After that date, institutions lose claim to any funds in the current fiscal year not yet drawn down from the Coordinating Board for timely disbursement to students. Funds released in this manner in the first year of the biennium become available to the institution for use in the second year of the biennium. Funds released in this manner in the second year of the biennium become available to the Coordinating Board for utilization in scholarship processing. Should these unspent funds result in additional funding available for the next biennium's program, revised allocations, calculated according to the allocation methodology outlined in this rule, will be issued to participating institutions during the fall semester.~~]

[~~(b) Reductions in Funding.~~]

[~~(1) If annual funding for the program is reduced after the start of a fiscal year, the Coordinating Board may take steps to help distribute the impact of reduced funding across all participating institutions by an across-the-board percentage decrease in all institutions' allocations.~~]

~~[(2) If annual funding is reduced prior to the start of a fiscal year, the Coordinating Board may recalculate the allocations according to the allocation methodology outlined in this rule for the affected fiscal year based on available dollars.]~~

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 24. STUDENT LOAN PROGRAMS
SUBCHAPTER D. COLLEGE ACCESS LOAN PROGRAM

19 TAC §24.46

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to Texas Administrative Code, Title 19, Part 1, Chapter 24, Subchapter D, §24.46, concerning Repayment of Loans. Specifically, this amendment will specify the manner in which College Access Loans are assigned a repayment period.

The Coordinating Board is authorized by Texas Education Code, Chapter 52, Subchapter C, and §52.31, et. seq., to adopt rules relating to state loan programs.

Rule 24.46, Repayment of Loans, is amended by revising subsection (a), which prescribes how repayment periods are assigned to College Access Loans upon entering repayment. The amendment maintains the existing maximum repayment period (20 years) for such loans, while specifying that the standard repayment period and conditions for requesting an extended repayment period shall be specified in the loan promissory note. The revised methodology simplifies implementation, ensures clear continuity between agency policy and loan documentation, and allows the Coordinating Board to respond efficiently to ensure general alignment between its practices and those of the federal student loan program, in keeping with its statutory mandate.

Anthony Infantini, Chief Financial Officer, has determined that for each of the first five years the section is in effect there would be no fiscal implications for state or local governments as a result of enforcing or administering the rule. There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule. There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There is no impact on small businesses, micro businesses, and rural communities. There is no anticipated impact on local employment.

Anthony Infantini, Chief Financial Officer, has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be the greater clarity regarding loan repayment options. There are no anticipated economic costs to persons who are required to comply with the section as proposed.

Government Growth Impact Statement

(1) the rule will not create or eliminate a government program;

(2) implementation of the rule will not require the creation or elimination of employee positions;

(3) implementation of the rule will not require an increase or decrease in future legislative appropriations to the agency;

(4) the rule will not require an increase or decrease in fees paid to the agency;

(5) the rule will not create a new rule;

(6) the rule will not limit an existing rule;

(7) the rule will not change the number of individuals subject to the rule; and

(8) the rule will not affect this state's economy.

Comments on the proposed rule or information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research or analysis, may be submitted to Anthony Infantini, Chief Financial Officer, P.O. Box 12788, Austin, Texas 78711-2788, or via email at SFAPPolicy@highered.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Education Code, Chapter 52, Subchapter C, and Section 52.31, et. seq., which provide the Coordinating Board with the authority to adopt rules relating to state loan programs.

The proposed amendment affects Texas Administrative Code, Title 19, Part 1, Chapter 24, Subchapter D.

§24.46. Repayment of Loans.

(a) Repayment Period. <u>The promissory note shall specify a standard repayment period for a loan under this subchapter, as well as the conditions under which a borrower may request an extended repayment period, not to exceed twenty (20) years.</u> [~~The repayment period for a College Access Loan shall be:~~]

~~[(1) Ten (10) years, if the amount of principal owed by the borrower on loans authorized under this chapter is less than $30,000; or]~~

~~[(2) Twenty (20) years, if the amount of principal owed by the borrower on loans authorized under this chapter exceeds $30,000.]~~

(b) Minimum Monthly Payment. Unless a lower monthly payment is authorized under §24.14 of this chapter (relating to Forbearance), a borrower's minimum monthly payment for a College Access Loan shall be the greater of:

(1) the amount required to amortize the loan over the course of the repayment period; or

(2) fifty dollars ($50.00).

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER BB. COMMISSIONER'S RULES CONCERNING STATE PLAN FOR EDUCATING EMERGENT BILINGUAL STUDENTS

19 TAC §§89.1201, 89.1203, 89.1210, 89.1215, 89.1220, 89.1226 - 89.1228, 89.1230, 89.1235

The Texas Education Agency (TEA) proposes amendments to §§89.1201, 89.1203, 89.1210, 89.1215, 89.1220, 89.1226, 89.1227, 89.1228, 89.1230, and 89.1235, concerning the state plan for educating emergent bilingual students. The proposed amendments would align with state and federal regulations by updating existing definitions and requirements to reflect current statutory terminology; clarify procedures related to the identification, placement, instruction, reclassification, monitoring, and reporting of emergent bilingual students; make technical and clarifying updates to improve the consistency, structure, and application of the rules; and comply with all applicable federal and state executive orders.

BACKGROUND INFORMATION AND JUSTIFICATION: The proposed amendments to 19 TAC §§89.1201, 89.1210, 89.1227, 89.1228, and 89.1235 would update terminology to comply with federal and state executive orders.

The proposed amendment to §89.1203 would add a definition for dually identified emergent bilingual students who are eligible for and receiving special education and related services to align with state guidance.

The proposed amendment to §89.1215 would align with state and federal regulations to clarify that American Sign Language, when identified on the home language survey, will no longer, by itself, initiate the identification process for potential emergent bilingual students.

The proposed amendment to §89.1220 would clarify procedures for out-of-state transfer students previously identified as emergent bilingual in Texas to align with state and federal regulations.

The proposed amendment to §89.1226 would update state policy language to align with state and federal regulations. Language would be stricken to remove the exclusion of prekindergarten and kindergarten students from eligibility for reclassification at the end of the academic year, consistent with federal requirements that all identified emergent bilingual students have the opportunity to demonstrate English language proficiency annually.

The proposed amendment to §89.1230 would update terminology related to dually identified emergent bilingual students who receive special education services.

FISCAL IMPACT: Jennifer Alexander, associate commissioner for special populations and student supports, has determined that for the first five-year period the proposal is in effect, there would be no direct fiscal impact to state government. The amendments may result in variable and indirect costs for school districts and open-enrollment charter schools due to reclassification of some prekindergarten and kindergarten students up to two years earlier than previously projected, which could affect bilingual education allotment funding. However, any impact would vary by district based on student demographics, enrollment patterns, and reclassification outcomes and cannot be reliably estimated.

LOCAL EMPLOYMENT IMPACT: The proposal has no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SMALL BUSINESS, MICROBUSINESS, AND RURAL COMMUNITY IMPACT: The proposal has no direct adverse economic impact for small businesses, microbusinesses, or rural communities; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

COST INCREASE TO REGULATED PERSONS: The proposal may impose a cost on local government due to changes in projected bilingual education allotment funding. However, the proposal is exempt from the requirements of Texas Government Code, §2001.0045, because the rules are necessary to receive a source of federal funds or to comply with federal law.

TAKINGS IMPACT ASSESSMENT: The proposal does not impose a burden on private real property and, therefore, does not constitute a taking under Texas Government Code, §2007.043.

GOVERNMENT GROWTH IMPACT: TEA staff conducted a Government Growth Impact assessment for this proposed rulemaking. During the first five years the rules are in effect, the amendments would expand and limit existing regulations by reorganizing and updating the commissioner's rules governing bilingual education and special language programs, refining alignment with statute and applicable federal and state executive orders, providing greater specificity regarding program implementation for emergent bilingual students, and making non-substantive revisions to improve clarity and usability.

The proposed rulemaking would not create or eliminate a government program; would not require the creation of new employee positions or elimination of existing employee positions; would not require an increase or decrease in future legislative appropriations to the agency; would not require an increase or decrease in fees paid to the agency; would not create a new regulation; would not repeal an existing regulation; would not increase or decrease the number of individuals subject to its applicability; and would not positively or adversely affect the state's economy.

PUBLIC BENEFIT AND COST TO PERSONS: Ms. Alexander has determined that for each year of the first five years the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal would be to improve clarity, consistency, and transparency in the statewide administration of bilingual education and special language programs by supporting uniform identification, placement, and monitoring of emergent bilingual students; aligning commissioner's rules with current statutory terminology and federal requirements; and enhancing the clarity and usability of the rules for districts and stakeholders. There is no anticipated economic cost to persons who are required to comply with the proposal.

DATA AND REPORTING IMPACT: The proposal would have no data and reporting impact.

PRINCIPAL AND CLASSROOM TEACHER PAPERWORK REQUIREMENTS: TEA has determined that the proposal would not require a written report or other paperwork to be completed by a principal or classroom teacher.

PUBLIC COMMENTS: TEA requests public comments on the proposal, including, per Texas Government Code, §2001.024(a)(8), information related to the cost, benefit, or effect of the proposed rule and any applicable data, research, or analysis, from any person required to comply with the proposed rule or any other interested person. The public comment period on the proposal begins August 7, 2026, and ends September 7, 2026. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on August 7, 2026. A form for submitting public comments is available on the TEA website at https://tea.texas.gov/laws-and-rules/commissioner-rules-tac/proposed-commissioner-education-rules.

STATUTORY AUTHORITY. The amendments are proposed under Texas Education Code (TEC), §29.051, which establishes the state policy regarding bilingual and special language programs; TEC, §29.052, which establishes the definitions of an emergent bilingual student and parent; TEC, §29.053, which establishes the criteria for the establishment of bilingual education and special language programs; TEC, §29.054, as amended by House Bill (HB) 2 and Senate Bill 2185, 89th Texas Legislature, Regular Session, 2025, which establishes the criteria for exceptions; TEC, §29.055, which establishes the criteria for program content and the method of instruction; TEC, §29.056, as amended by HB 8, 89th Texas Legislature, Second Called Session, 2025, which establishes the criteria for enrollment of students in the program; TEC, §29.0561, which establishes the criteria for the evaluation of transferred students and reenrollment procedures; TEC, §29.057, which establishes the criteria for facilities and classes of bilingual education and special language programs; TEC, §29.058, which establishes the criteria for enrollment of students who do not have limited English proficiency; TEC, §29.059, which establishes the criteria for cooperation among districts to provide bilingual education and special language programs; TEC, §29.060, which establishes the criteria for preschool, summer school, and extended time programs; TEC, §29.061, which establishes the criteria for bilingual education and special language program teachers; TEC, §29.062, which establishes the criteria for monitoring compliance to evaluate the effectiveness of programs related to bilingual education and special language programs; TEC, §29.063, which establishes the criteria for language proficiency assessment committees; TEC, §29.064, which establishes the criteria for appeals; and TEC, §29.066, which establishes the criteria for a district's Public Education Information Management System reporting requirements.

CROSS REFERENCE TO STATUTE. The amendments implement Texas Education Code, §§29.051; 29.052; 29.053; 29.054, as amended by House Bill (HB) 2 and Senate Bill 2185, 89th Texas Legislature, Regular Session, 2025; 29.055; 29.056, as amended by HB 8, 89th Texas Legislature, Second Called Session, 2025; 29.0561; 29.057; 29.058; 29.059; 29.060; 29.061; 29.062; 29.063; 29.064; and 29.066.

§89.1201. Policy.

(a) It is the policy of the state that every student in the state who has a home language other than English and who is identified as an emergent bilingual (EB) student shall be provided a full opportunity to participate in bilingual education, to include bilingual and English as a second language (ESL) programs, as required in Texas Education Code (TEC), Chapter 29, Subchapter B. To ensure equal educational opportunity, as required in TEC, §1.002(a), each school district shall:

(1) identify EB students based on criteria established by the state;

(2) provide bilingual education, including bilingual and ESL programs, as integral parts of the general program as described in TEC, §4.002;

(3) seek appropriately certified teaching personnel to ensure that EB students are afforded full opportunity to master the essential knowledge and skills required by the state; and

(4) assess for academic achievement and linguistic progress in accordance with TEC, Chapter 29, Subchapter B, to ensure accountability for EB students and the schools that serve them.

(b) The goal of bilingual program models, including dual-language immersion and transitional bilingual education, shall be to enable EB students to develop home or partner language literacy and academic skills through the integrated use of content-based language instructional methods to become proficient in listening, speaking, reading, and writing in the English language. Such programs shall include the mastery of grade level reading and language arts knowledge and skills in the home or partner language and in English, along with mathematics, science, and social studies knowledge and skills as integral parts of the academic goals for all students to enable EB students to participate fully [~~equitably~~] in school.

(c) The goal of ESL program models, including content-based and pull-out, shall be to enable EB students to become proficient in listening, speaking, reading, and writing in the English language through the integrated use of content-based language instructional methods. The ESL program shall include the mastery of grade level English reading and language arts, mathematics, science, and social studies knowledge and skills in English as integral parts of the academic goals for all students to enable EB students to participate fully [~~equitably~~] in school.

(d) Bilingual and ESL programs shall be integral parts of the total school program. Such programs shall use instructional approaches designed to meet the specific language needs of EB students. The curriculum content of the programs shall be based on the Texas Essential Knowledge and Skills and the English Language Proficiency Standards required by the state.

§89.1203. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Alternative methods--A temporary instructional plan that meets the affective, linguistic, and cognitive needs of emergent bilingual (EB) students and equips the teacher under a bilingual exception or an English as a second language (ESL) waiver described in §89.1207 of this title (relating to Bilingual Program Exceptions and English as a Second Language Program Waivers) to align closely to the required bilingual or ESL program through the comprehensive professional development plan.

(2) Bilingual education allotment (BEA)--An adjusted basic funding allotment provided for each school district based on student average daily attendance in a bilingual or an ESL program in accordance with Texas Education Code (TEC), §48.105.

(3) Certified bilingual program teacher--A teacher holding bilingual certification and appropriately certified for the grade level and content area. The term "certified bilingual program teacher" is synonymous with the term "professional bilingual educator" used in TEC, §29.063.

(4) Certified English as a second language teacher--A teacher appropriately certified in ESL as well as for the grade level and content area. The term "certified English as a second language teacher" as used in this subchapter is synonymous with the term "professional transitional language educator" used in TEC, §29.063.

(5) Content-based language instruction (CBLI)--An integrated approach to language instruction in which language is developed within the context of content delivery that is linguistically sustaining and is used across all programs for EB students to develop the home or partner language and English.

(6) Dual language immersion (DLI) program--A state-approved bilingual program in accordance with TEC, §29.066, that uses English and a partner language. The two state-approved DLI program models are one-way DLI and two-way DLI.

(7) Dual-language instruction--An educational approach that focuses on the use of English and the student's home or partner language for instructional purposes as described in TEC, §29.055, to include both DLI and transitional bilingual education (TBE) programs.

(8) Dually identified--A student who is identified as an emergent bilingual and is eligible for and receiving special education and related services.

(9) [~~(8)~~] Emergent bilingual (EB)--A student identified by the Language Proficiency Assessment Committee (LPAC) who is in the process of acquiring English and has another language as the student's home language. This term is interchangeable with English learner as used in federal regulations and replaces the term "limited English proficient student" formerly used in TEC, Chapter 29, Subchapter B.

(10) [~~(9)~~] English as a second language (ESL) program--A special language program in accordance with TEC, Chapter 29, Subchapter B, to include both content-based and pull-out program models. Another related term for an ESL program is "English as an additional language program."

(11) [~~(10)~~] English language proficiency standards (ELPS)--The ELPS outline English language proficiency level descriptors and student expectations for EB students. School districts shall implement these standards as an integral part of each subject in the required curriculum. The ELPS are to be published along with the Texas Essential Knowledge and Skills for each subject in the required curriculum, as described in Chapter 120, Subchapter B, [~~§74.4(a)(1)~~] of this title (relating to English Language Proficiency Standards).

(12) [~~(11)~~] English proficient student--A former EB student who has met reclassification as English proficient by the LPAC.

(13) [~~(12)~~] Enrollment--Receiving instruction by attendance in a public school. This term does not apply to students who are registered but not yet receiving instruction.

(14) [~~(13)~~] Exit--The point at which an EB student is reclassified as English proficient and ends bilingual or ESL program participation with LPAC recommendation and parental approval. The term "exit" as used in this subchapter is synonymous with the description in TEC, Chapter 29, Subchapter B, of a student having been "transferred out" of bilingual or special language programming. For the purpose of meeting the goals of a DLI program, the LPAC recommends that the EB student is reclassified as English proficient but continues participation in the program to further develop biliteracy for the duration of the program for prekindergarten through Grade 12.

(15) [~~(14)~~] Home language--A language other than English that is indicated on the home language survey under §89.1215 of this title (relating to Home Language Survey) as being used at home, used by the child at home, or used by the child in a previous home setting.

(16) [~~(15)~~] Language allocation plan--A strategically developed and clearly communicated plan for a DLI program that defines the percentage of language of instruction for each content area and grade level.

(17) [~~(16)~~] Language Proficiency Assessment Committee (LPAC) --A designated group of committee members as described in §89.1220 of this title (relating to Language Proficiency Assessment Committee (LPAC)) and TEC, §29.063 [~~§26.063~~] , that ensures the appropriate identification, placement, assessment, services, reclassification, and monitoring of EB students. The LPAC also meets in conjunction with all other committees related to programs and services for which an EB student qualifies.

(18) [~~(17)~~] Non-emergent bilingual student--A student who has never been classified as an EB student by an LPAC.

(19) [~~(18)~~] Paired teaching--A teaching partnership permissible in a DLI program model when half the content area instruction is in the partner language and half is in English (50/50 language allocation). One teacher provides content area instruction in the partner language while the second teacher provides content area instruction delivered in English. The teacher instructing in the partner language shall hold bilingual certification while the teacher instructing in English may hold either bilingual or ESL certification.

(20) [~~(19)~~] Parent--The parent or legal guardian of the student in accordance with TEC, §29.052(2).

(21) [~~(20)~~] Partner language--The designated language of instruction other than English within a DLI program. The partner language within a DLI program may or may not be the home language of a DLI program student.

(22) [~~(21)~~] Prekindergarten--Students enrolled in a 3- or 4-year-old prekindergarten program as well as 3- or 4-year-old students enrolled in an early education setting.

(23) [~~(22)~~] Reclassification--The process by which the LPAC determines that an EB student has met the appropriate criteria to be classified as English proficient, and the student enters year 1 of monitoring as indicated in the Texas Student Data System Public Education Information Management System.

(24) [~~(23)~~] School district-- The term school district includes an open-enrollment charter school or a district of innovation.

§89.1210. Program Content and Design.

(a) Each school district required to offer bilingual education through bilingual or English as a second language (ESL) program models shall provide each emergent bilingual (EB) student the opportunity to be enrolled in the required program at their grade level. Each student's level of proficiency shall be designated by the Language Proficiency Assessment Committee (LPAC) in accordance with §89.1220(g) of this title (relating to Language Proficiency Assessment Committee (LPAC)). The school district shall accommodate the instruction, pacing, and materials to ensure that EB students have a full opportunity to master the essential knowledge and skills of the required curriculum, which includes the Texas Essential Knowledge and Skills (TEKS) and English language proficiency standards (ELPS). Students participating in bilingual program models may demonstrate their mastery of the essential knowledge and skills in either the home or partner language or in English for each content area.

(1) Bilingual program models established by a school district shall be full-time programs of dual-language instruction (English and home or partner language) that provides for learning academic and literacy skills in the student's home or program partner language and for carefully structured and sequenced mastery of English language skills under Texas Education Code (TEC), §29.055(a), throughout the elementary grades and beyond if the district so chooses as defined in §89.1205(a) of this title (relating to Required Bilingual and English as a Second Language (ESL) Programs).

(2) ESL program models established by a school district shall be programs of intensive instruction in English in which ESL teachers recognize and address language differences in accordance with TEC, §29.055(a), in prekindergarten through Grade 12.

(b) Bilingual and ESL program models shall be integral parts of the general educational program required under Chapter 74 of this title (relating to Curriculum Requirements) to include foundation and enrichment areas, ELPS, and college and career readiness standards. In bilingual program models, school districts shall purchase instructional materials in all program languages with the district's instructional materials allotment or otherwise acquire instructional materials for use in bilingual program classes in accordance with TEC, §31.029(a). Instructional materials for bilingual programs on the list adopted by the commissioner of education, as provided by TEC, §31.0231, may be used as curriculum tools to enhance the learning process. The school district shall ensure ongoing collaboration between bilingual and ESL programs and the general education programs to provide [~~equitable~~] educational access for all learners. Bilingual and ESL programs shall address the affective, linguistic, and cognitive needs of EB students as follows.

(1) Affective.

(A) EB students in a bilingual program shall be provided instruction using content-based language instructional methods in English and/or their home or partner language to acclimate students to the school environment and to develop academic language skills, which instills confidence, self-assurance, and a positive identity with their family [~~cultural~~] heritages. The program shall be designed to consider the students' learning experiences and shall incorporate various [~~the cultural~~] aspects of the students' backgrounds in accordance with TEC, §29.055(b).

(B) EB students in an ESL program shall be provided instruction using content-based language instructional methods in English to acclimate students to the school environment and to develop academic language skills, which instills confidence, self-assurance, and a positive identity with their family [~~cultural~~] heritages. The program shall be designed to incorporate the students' home languages and learning experiences and shall incorporate various [~~the cultural~~] aspects of the students' backgrounds in accordance with TEC, §29.055(b).

(2) Linguistic.

(A) EB students in a bilingual program shall be provided targeted and intentional academic language instruction to develop proficiency in listening, speaking, reading, and writing in both English and the home or partner language. The instruction in both languages shall be structured to ensure that the students develop a strong literacy foundation and master the required essential knowledge and skills and higher-order thinking skills in all subjects, providing individualized linguistically accommodated content instruction commensurate with the students' language proficiency levels. The ELPS student expectations are provided for English development in conjunction with the TEKS.

(B) EB students in an ESL program shall be provided targeted and intentional academic language instruction to develop proficiency in listening, speaking, reading, and writing in the English language. The instruction in academic content areas shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills in all subjects, providing individualized linguistically accommodated content instruction commensurate with the students' language proficiency levels. The ELPS student expectations are provided for English development in conjunction with the TEKS.

(3) Cognitive.

(A) EB students in a bilingual program shall be provided instruction in reading and language arts, mathematics, science, and social studies in both the home or partner language and English, using content-based language instructional methods in either the home or partner language, English, or both, depending on the program model(s) implemented by the district. The content area instruction in both languages shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills in all subjects.

(B) EB students in an ESL program shall be provided instruction in English in reading and language arts, mathematics, science, and social studies using content-based language instructional methods. The instruction in all academic content areas shall be structured to ensure that the students master the required essential knowledge and skills and higher-order thinking skills.

(c) The bilingual program [~~Bilingual programs~~] shall be implemented through at least one of the following program models.

(1) Transitional bilingual/early exit is a bilingual program model in which identified EB students are served in both English and the students' home language and are prepared to meet reclassification criteria to be successful in English instruction with no second language acquisition supports not earlier than two or later than five years after the student enrolls in school. Instruction in this program is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061(b)(1), for the assigned grade level and content area. The goal of early-exit transitional bilingual education is for program participants to use their home language as a resource while acquiring full proficiency in English. This model provides instruction in literacy and academic content through the medium of the students' home language and English using content-based language instruction methods.

(2) Transitional bilingual/late exit is a bilingual program model in which identified EB students are served in both English and the students' home language and are prepared to meet reclassification criteria to be successful in English instruction with no second language acquisition supports not earlier than six or later than seven years after the student enrolls in school. Instruction in this program is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061(b)(2), for the assigned grade level and content area. The goal of late-exit transitional bilingual education is for program participants to use their home language as a resource while acquiring full proficiency in English. This model provides instruction in literacy and academic content through the medium of the students' home language and English through content-based language instruction.

(3) Dual language immersion/one-way is a bilingual/biliteracy program model in which identified EB students are served in both English and the program's partner language and are prepared to meet reclassification criteria in order to be successful in English in-

struction with no second language acquisition supports not earlier than six or later than seven years after the student enrolls in school. Instruction provided in the partner language and English is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061. When the instructional time for both the partner language and English is 50%, a paired-teaching arrangement may be utilized in which instruction provided in English may be delivered either by a teacher appropriately certified in bilingual education or by a different teacher certified in ESL in accordance with TEC, §29.061. The goal of one-way dual language immersion is for program participants to attain bilingualism and biliteracy in English and the partner language. This model provides ongoing instruction in literacy and academic content through content-based language instruction in English as well as the program's partner language, with at least half of the instruction delivered in the program's partner language for the duration of the program.

(4) Dual language immersion/two-way is a bilingual/biliteracy program model in which identified EB students are integrated with non-EB students and are served in both English and the program's partner language and are prepared to meet reclassification criteria in order to be successful in English instruction with no second language acquisition supports not earlier than six or later than seven years after the student enrolls in school. Instruction provided in English and the partner language is delivered by a teacher appropriately certified in bilingual education under TEC, §29.061. When the instructional time for both the partner language and English is 50%, a paired-teaching arrangement may be utilized in which instruction provided in English may be delivered either by a teacher appropriately certified in bilingual education or by a different teacher certified in ESL in accordance with TEC, §29.061. The goal of two-way dual language immersion is for program participants to attain bilingualism and biliteracy in English as well as the partner language. This model provides ongoing instruction in literacy and academic content through content-based language instruction in English and the partner language with at least half of the instruction delivered in the program's partner language for the duration of the program.

(d) The ESL program shall be implemented through one of the following program models.

(1) An ESL/content-based program model is an English acquisition program that serves identified EB students through English instruction provided by a teacher appropriately certified in ESL under TEC, §29.061(c), using content-based language instruction methods in reading and language arts, mathematics, science, and social studies. The goal of content-based ESL is for program participants to attain full proficiency in English in order to participate fully [~~equitably~~] in school.

(2) An ESL/pull-out program model is an English acquisition program that serves identified EB students through English instruction using content-based language instruction methods provided by an appropriately certified ESL teacher under TEC, §29.061(c), in reading and language arts in a pull-out or inclusionary delivery setting. The goal of ESL pull-out is for program participants to attain full proficiency in English in order to participate fully [~~equitably~~] in school.

(e) Except in the courses specified in subsection (f) of this section, content-based language instructional methods, which may involve the use of the students' home or the program's partner language, may be provided in any of the courses or electives required for promotion or graduation to assist program participants in mastering the essential knowledge and skills for the required subject(s). The use of content-based language instruction shall not impede the awarding of credit toward meeting promotion or graduation requirements.

(f) In subjects such as art, music, and physical education, EB students shall participate with their non-EB peers in general education classes provided in the subjects. As noted in TEC, §29.055(d), elective courses included in the curriculum may be taught in a language other than English. The school district shall ensure that EB students enrolled in bilingual and ESL programs have a meaningful opportunity to participate with non-EB peers in all extracurricular activities.

(g) The required bilingual or ESL program shall be provided to every EB student with parental approval until such time that the student meets reclassification criteria as described in §89.1226(i) of this title (relating to Testing and Classification of Students) or graduates from high school. Parental approval is required when the LPAC recommends continuing dual language immersion program participation beyond reclassification.

§89.1215. Home Language Survey.

(a) For each new student enrolling for the first time in a Texas public school in any grade from prekindergarten through Grade 12, the Texas Education Agency (TEA)-developed home language survey shall be administered. The [~~This~~] home language survey completed at initial enrollment shall [~~will~~] serve as the student's [~~original and only~~] home language survey of record throughout the student's enrollment [~~educational experience~~] in Texas public schools. School districts shall:

(1) ensure that the student's parent understands the language used in the survey and its implications;

(2) require that the survey be signed by the student's parent for each student in prekindergarten through Grade 8 or by the student in Grades 9-12 as permitted under Texas Education Code, §29.056(a)(1);

(3) ensure the student's parent is aware of the benefits of bilingual and ESL programs; and

(4) maintain the original copy of the survey in the student's permanent record and transfer it to any subsequent Texas public school districts in which the student enrolls.

(b) The TEA-developed home language survey shall be administered in English and a language that the parents can understand. The home language survey shall include the following questions.

(1) "Which languages are used at home?"

(2) "Which languages are used by the child at home?"

(3) "If the child had a previous home setting, which languages were used? If there was no previous home setting, answer Not Applicable (N/A)."

(c) Except as provided in subsection (d) of this section, if [~~If~~] any response on the home language survey indicates that a language other than English is or was used for communication, the student shall be tested in accordance with §89.1226 of this title (relating to Testing and Classification of Students).

(d) If American Sign Language (ASL) is a response indicated on the home language survey, it alone does not trigger the identification process in accordance with §89.1226 of this title. Responses to the home language survey questions described in subsection (b) of this section must also indicate a language other than English in addition to ASL.

(e) [~~(d)~~] For students previously enrolled in a Texas public school, the receiving district shall secure the student records, including the original home language survey and language proficiency assessment committee documentation as described in §89.1220(l) of this title (relating to Language Proficiency Assessment Committee (LPAC)), as applicable. All attempts to contact the sending district to request records shall be documented. Multiple attempts to obtain the student's original home language survey shall be made.

(f) [~~(e)~~] If a parent determines an error was made when completing the original home language survey, the parent may request a correction only if:

(1) the student has not yet been assessed for English proficiency; and

(2) corrections are made within two calendar weeks of the student's initial enrollment date in Texas public schools.

§89.1220. Language Proficiency Assessment Committee (LPAC).

(a) School districts shall by local board policy establish and operate one or more Language Proficiency Assessment Committees (LPACs). The school district shall have on file a policy and procedures for the selection, appointment, and orientation of members of the LPAC(s).

(b) The LPAC shall include an appropriately certified bilingual educator (for students served through a bilingual program), an appropriately certified English as a second language (ESL) educator (for students served through an ESL program), a parent of an emergent bilingual (EB) student participating in a bilingual or ESL program, and a campus administrator in accordance with Texas Education Code (TEC), §29.063.

(c) In addition to the three required members of the LPAC, the school district may add other members to the committee. All required members of an LPAC must be present either in person or virtually to make individualized student decisions.

(d) No parent serving on the LPAC shall be an employee of the school district.

(e) A school district shall establish and operate a sufficient number of LPACs to enable them to discharge their duties within four calendar weeks of the enrollment of an EB student.

(f) All members of the LPAC, including parents, shall be acting for the school district and shall observe all laws and rules governing confidentiality of information concerning individual students. The school district shall be responsible for the orientation of all members of the LPAC, including the parents. The LPAC may use alternative meeting methods, such as phone or video conferencing and the use of electronic signatures that adhere to district policy.

(g) Upon a student's initial enrollment in a Texas public school [~~schools~~] , a student's transfer from a previous Texas public school district, transfer from an out-of-state public school district, and at the end of each school year, the LPAC shall review all pertinent information on all potential and identified EB students, including EB students with a parental denial of program participation, in accordance with §89.1226 of this title (relating to Testing and Classification of Students).

(1) For students initially enrolling in Texas public schools, the LPAC shall:

(A) designate the language proficiency level of each EB student in accordance with the guidelines issued pursuant to §89.1226(b)-(f) of this title;

(B) recommend, subject to parental approval, the initial instructional placement of each EB student in the required bilingual or ESL program without restricting access due to scheduling, staffing, or class size constraints; and

(C) facilitate the participation of EB students in other programs for which they are eligible while ensuring full access to the language program required under TEC, §29.053.

(2) For transferring in-state students or for a student transferring from an out-of-state public school district who was previously enrolled in a Texas public school district within the last 12 months , the LPAC shall:

(A) review permanent record and LPAC documentation from the previous Texas school district to determine if the student has been identified as an EB student based on the original home language survey and initial identification process;

(B) identify previous program participation with parental approval and recommend appropriate program placement based on student data and available program models or determine the need for monitoring of students who have previously met reclassification and are in their first two years of monitoring;

(C) inform parents who have previously denied program services of recommended bilingual or ESL programs available in the current district;

(D) review linguistic progress and academic achievement data of each EB student to inform instructional practices; and

(E) facilitate the participation of EB students in other programs for which they are eligible while ensuring full access to the language program required under TEC, §29.053.

(3) For a student transferring from an out-of-state public school district who was previously identified as an EB student in a Texas public school district and more than 12 months has elapsed--measured from the first day of the current school year--since their EB identification in Texas, the LPAC shall review permanent record and LPAC documentation from the previous Texas school district to identify previous program participation, and:

(A) if records indicate the student's parents previously denied program participation in Texas, the district will inform the parent of bilingual or ESL programs available in the current district and distribute a new home language survey only if the parent consents to such distribution; or

(B) if records from the previous Texas school district indicate the student did participate in a program in Texas, the LPAC shall review records from the most recent out-of-state school in which the student was enrolled to determine if the student was reclassified under that state's criteria.

(i) If the student met reclassification criteria in the other state, the LPAC shall determine the need for monitoring if the student would be in their first two years of monitoring under Texas standards.

(ii) If the student did not meet reclassification criteria in the other state, or if the records are unclear or unavailable, the district shall begin the identification process again with a new home language survey.

(4) [~~(3)~~] At the end of the school year, for all identified EB students, including EB students with a parental denial of program participation, the LPAC shall:

(A) review English language proficiency progress and academic achievement data in English for ESL program students;

(B) review English and home/partner language progress as well as academic achievement data in English and the home/partner language for bilingual program students;

(C) reclassify eligible EB students as English proficient in accordance with the criteria described in §89.1226(i) of this title;

(D) recommend exit from program of reclassified English proficient students, pending parental approval, or continuation of program participation for reclassified students participating in a dual language immersion one-way or two-way program model, according to the goals of the program; and

(E) prepare parental reports on student progress for all identified EB students to be provided to parents within the first 30 calendar days after the beginning of the next school year, which include data on linguistic and academic progress, benefits of bilingual or ESL program participation, and the criteria for reclassification as English proficient.

(h) The LPAC shall give written notice to the student's parent, informing the parent that the student has been identified as an EB student and requesting approval to place the student in the required bilingual or ESL program not later than the 10th calendar day after the date of the student's identification in accordance with TEC, §29.056. The notice shall include information about the benefits of the recommended bilingual or ESL program and that it is an integral part of the school program.

(i) Before the administration of the state criterion-referenced test each year, the LPAC shall determine the appropriate assessment option for each EB student as outlined in Chapter 101, Subchapter AA, of this title (relating to Commissioner's Rules Concerning the Participation of English Language Learners in State Assessments).

(j) Pending completion of the identification process, receipt of LPAC documentation for transferring students, or parental approval of an identified EB student's placement into the bilingual or ESL program recommended by the LPAC, the school district shall place the student in the recommended program. Only EB students with parental approval for bilingual or ESL program participation will be included in the bilingual education allotment (BEA).

(k) The LPAC shall monitor the academic progress of each student, including any student who previously had a parental denial of program participation, who has met criteria for reclassification in accordance with TEC, §29.056(g), for the first two years after reclassification. If the student earns a failing grade in a subject in the foundation curriculum under TEC, §28.002(a)(1), during any grading period in the first two school years after the student is reclassified, the LPAC shall determine, based on the student's English language acquisition needs, whether the student may require targeted instruction or, after careful consideration of multiple linguistic and academic data points, should be reconsidered for placement in a bilingual or ESL program. In accordance with TEC, §29.0561, the LPAC shall review the student's performance and consider, at a minimum, the following:

(1) the total amount of time the student was enrolled in a bilingual or ESL program;

(2) the student's grades each grading period in each subject in the foundation curriculum under TEC, §28.002(a)(1);

(3) the student's performance on each assessment instrument administered under TEC, §39.023(a) or (c);

(4) the number of credits the student has earned toward high school graduation, if applicable; and

(5) any disciplinary actions taken against the student under TEC, Chapter 37, Subchapter A (Alternative Settings for Behavior Management).

(l) The student's permanent record shall contain documentation of all actions impacting the EB student.

(1) Documentation shall include:

(A) the original home language survey;

(B) the identification as an EB student;

(C) the designation of the student's level of language proficiency;

(D) the recommendation of program placement;

(E) parental approval or denial of placement into the program;

(F) the date of placement in the program;

(G) assessment information as outlined in Chapter 101, Subchapter AA, of this title;

(H) additional instructional linguistic accommodations provided to address the specific language needs of the student;

(I) the date of reclassification and the date of exit from the program with parental approval; and

(J) the results of monitoring for academic success, including students formerly identified as EB students, as required under TEC, §29.063(c)(4).

(2) Current documentation as described in paragraph (1) of this subsection shall be forwarded in the same manner as other student records to another school district in which the student enrolls.

(m) A school district may place a student in or exit a student from a program without written approval of the student's parent if:

(1) the student is 18 years of age or has had the disabilities of minority removed;

(2) the parent provides approval through a phone conversation or e-mail that is documented in writing and retained; or

(3) an adult who the school district recognizes as standing in parental relation to the student provides written approval. This may include a foster parent or employee of a state or local governmental agency with temporary possession or control of the student.

§89.1226. Testing and Classification of Students.

(a) The single state-approved English language proficiency test for identification of emergent bilingual (EB) students described in subsection (c) of this section shall be used as part of the standardized, statewide identification process.

(b) Within four calendar weeks of initial enrollment in a Texas public school, a student with a language other than English indicated on the home language survey shall be administered the state-approved English language proficiency test for identification as described in subsection (c) of this section and shall be identified as an EB student and recommended for placement into the required bilingual or English as a second language (ESL) program in accordance with the criteria listed in subsection (f) of this section.

(c) To identify EB students, school districts shall administer to each student who has a language other than English as identified on the home language survey:

(1) in prekindergarten through Grade 1, the listening and speaking components of the state-approved English language proficiency test for identification; and

(2) in Grades 2-12, the listening, speaking, reading, and writing components of the state-approved English language proficiency test for identification.

(d) School districts that provide a bilingual program at the elementary grades shall administer a language proficiency test in the home language of the student who is eligible to be served in the bilingual program. If the home language of the student is Spanish, the school district shall administer the Spanish version of the state-approved language proficiency test for identification. If a state-approved language proficiency test for identification is not available in the home language of the student, the school district shall determine the student's level of proficiency using informal oral language assessment measures.

(e) All language proficiency testing shall be administered by professionals or paraprofessionals who are proficient in the language of the test and trained in the language proficiency testing requirements of the test publisher.

(f) For placement into a bilingual or ESL program, a student shall be identified as an EB student using the following criteria.

(1) In prekindergarten through Grade 1, the student's score(s) from the listening and/or speaking components on the state-approved English language proficiency test for identification is/are below the level designated for indicating English proficiency.

(2) In Grades 2-12, the student's score(s) from the listening, speaking, reading, and/or writing components on the state-approved English language proficiency test for identification is/are below the level designated for indicating English proficiency.

(g) A student shall be identified as EB if the student's beginning English language skills interfere with the completion of the English language proficiency assessment described in subsection (c) of this section.

(h) The Language Proficiency Assessment Committee (LPAC), in conjunction with the admission, review, and dismissal (ARD) committee, shall identify a student as EB if the student's disability(ies) [~~disabilities~~] interfere with the completion of the English language proficiency assessment described in subsection (c) of this section. The bilingual or ESL program placement recommendation shall be determined by the LPAC, in conjunction with the ARD committee, in accordance with §89.1220(f) of this title (relating to Language Proficiency Assessment Committee (LPAC)), ensuring access to both the bilingual or ESL program and the special education and related services needed to provide a free, appropriate public education as identified in the student's individualized education program.

(i) An EB student enrolled in prekindergarten-Grade 12 may be reclassified as English proficient only at the end of the school year in which a student routinely demonstrates readiness for reclassification as English proficient and the ability to successfully participate in grade level content instruction that is delivered with no second language acquisition supports. EB students, including those with parental denials, are eligible for linguistic or non-linguistic based designated supports or accommodations on the state criterion-referenced English language arts and reading assessment instrument when recommended by the LPAC or any other committee. These designated supports or accommodations do not prevent an EB student from meeting reclassification criteria. An EB student reclassifies as English proficient when all three of the following criteria are met:

(1) a composite proficiency rating, which includes ratings in the areas of listening, speaking, reading, and writing, on the state-approved English language proficiency test for reclassification that is designated for indicating English proficiency . For prekindergarten students, the composite proficiency rating includes ratings in the areas of listening and speaking;

(2) passing standard met on the English language arts and reading assessment instrument under Texas Education Code (TEC), §39.023(a) or (c), or, for students at grade levels not assessed by the aforementioned assessment instruments, a score at or above the 40th percentile on both the English reading and the English language arts sections of the state-approved norm-referenced standardized achievement instrument; and

(3) the results of a subjective teacher evaluation using the state's standardized rubric.

[~~(j) An EB student may be reclassified as English proficient in prekindergarten or Kindergarten. A school district shall ensure that EB students are prepared to meet academic standards required by TEC, §28.0211.~~]

(j) [~~(k)~~] For EB students who are also eligible for special education services, the standardized process for student reclassification is followed in accordance with applicable provisions of subsection (i) of this section. However, annual meetings to review student progress and make recommendations for reclassification shall be made in all instances by the LPAC, in conjunction with the ARD committee, in accordance with §89.1230(b) of this title (relating to Eligible Students with Disabilities). Additionally, the LPAC, in conjunction with the ARD committee, shall determine participation and designated support or accommodation decisions on state criterion-referenced and English language proficiency assessments that differentiate between language proficiency and disabling conditions in accordance with §89.1230(a) of this title.

(k) An EB student with the most significant cognitive disability who is receiving special education services may be eligible to take the state's alternative criterion-referenced and alternative English language proficiency assessments. Dually identified students, like their non-disabled EB peers, are eligible to be reclassified as English proficient when they meet EB reclassification criteria at the end of the school year. The annual review of the student progress and decision to reclassify should be determined through focused coordination and collaboration of the LPAC and ARD committees.

[~~(l) For an EB student with a significant cognitive disability, the LPAC, in conjunction with the ARD committee, may recommend that the state's criterion-referenced and English language proficiency assessments used for reclassification are not appropriate because of the nature of the student's disabling condition. In these cases, the LPAC, in conjunction with the ARD committee, may recommend that the student take the state's alternate criterion-referenced and alternate English language proficiency assessments. Additionally, the LPAC, in conjunction with the ARD committee, may utilize the individualized reclassification process to determine appropriate performance standard requirements for the state standardized reading assessment and English language proficiency assessment by language domain under subsection (i)(1) of this section and utilize the results of a subjective teacher evaluation using the state's standardized alternate rubric.~~]

(l) [~~(m)~~] Notwithstanding §101.101 of this title (relating to Group-Administered Tests), all tests used for the purpose of identification and reclassification of students and approved by TEA shall be re-normed at least every eight years.

§89.1227. Minimum Requirements for Dual Language Immersion Program Model.

(a) A one-way or two-way dual language immersion (DLI) program model shall address all curriculum requirements specified in Chapter 74, Subchapter A, of this title (relating to Required Curriculum) in the program's partner language and English.

(b) A DLI program model shall be a full-time program of academic instruction in the program's partner language and English for all program participants, emphasizing the participation of identified emergent bilingual (EB) students. Access to the DLI program shall not be restricted based on race, creed, color, religious affiliation, age, or disability.

(c) A DLI program model shall provide educational access and [~~equitable,~~] authentic resources in English and the program's partner language to ensure development of bilingualism and biliteracy.

(d) The district shall develop a language allocation plan that ensures a minimum of 50% of content area instructional time is provided in the program's partner language for the duration of the program.

(e) Program implementation shall:

(1) begin at prekindergarten, Kindergarten, or Grade 1, as applicable, according to the district's earliest grade level provided;

(2) continue without interruption incrementally through the elementary grades;

(3) consider expansion to middle school and high school whenever possible; and

(4) include participation of former emergent bilingual students who have reclassified as English proficient for the duration of the program.

(f) A DLI program model shall be developmentally appropriate and based on current best practices identified in research. Particularly, EB students shall not be restricted access to a one-way or two-way DLI program model based on any linguistic or academic achievement measures in the program's partner language or English.

§89.1228. Two-Way Dual Language Immersion Program Model Implementation.

(a) Student enrollment in a two-way dual language immersion (DLI) program model is optional for non-emergent bilingual (EB) students in accordance with §89.1233(a) of this title (relating to Participation of Non-Emergent Bilingual Students).

(b) A two-way DLI program model shall fully disclose candidate selection criteria and ensure that access to the program is not based on race, creed, color, religious affiliation, age, or disability. Additionally, identified and reclassified EB students and non-EB students shall not be restricted access to the two-way DLI program model based on any linguistic or academic achievement measures in the program's partner language or English.

(c) A school district implementing a two-way DLI program model shall develop a policy for enrollment and continuation for students in this program model. The policy shall address:

(1) program [~~equitable~~] access, including the program's intention to maintain a ratio of 50% EB students to 50% non-EB students and have no more than two-thirds speakers of the partner language to one-third speakers of English in each classroom;

(2) support of program benefits and goals as stated in §89.1210 of this title (relating to Program Content and Design);

(3) the district's commitment to providing required [~~equitable~~] access to services for EB students and to ensuring continuity of program for all program participants;

(4) the program's language allocation plan for the grade levels in which the program will be implemented; and

(5) expectations for students, families, and district and campus stakeholders.

(d) A school district implementing a two-way DLI program model shall obtain written parental approval as follows.

(1) For EB students, written parental approval is obtained in accordance with §89.1240 of this title (relating to Parental Authority and Responsibility).

(2) For non-EB students, written parental approval is obtained through a school district-developed process.

(e) A school district implementing a two-way DLI program model shall determine the appropriate assessment option for program participants as follows.

(1) For EB students, the Language Proficiency Assessment Committee (LPAC) shall convene before the administration of the state criterion-referenced test each year to determine the appropriate assessment option for each EB student in accordance with §89.1220(i) of this title (relating to Language Proficiency Assessment Committee (LPAC)).

(2) For reclassified EB students and non-EB students, the appropriate assessment option for the administration of the state criterion-referenced test each year is determined by the LPAC or through a school district-developed process.

§89.1230. Eligible Dually Identified Students [~~with Disabilities~~].

(a) For students with disabilities, school districts shall utilize the state's criteria for identification of emergent bilingual (EB) students as described in §89.1226(f) of this title (relating to Testing and Classification of Students) and shall establish placement procedures that ensure that the placement recommendation by the Language Proficiency Assessment Committee (LPAC), in conjunction with the admission, review, and dismissal (ARD) committee, in a bilingual or English as a second language program is not refused based on the student's disability [~~disabling condition~~].

(b) LPAC members shall meet in conjunction with ARD committee members to review progress and provide recommendations regarding the educational needs of each dually identified [~~EB~~] student [~~who also qualifies for services in the school district's special education program~~].

§89.1235. Facilities.

(a) Bilingual and English as a second language (ESL) programs shall be located in the public schools of the school district with [~~equitable~~] access to all educational resources rather than in separate facilities.

(b) In order to provide the required bilingual or ESL programs, school districts may cluster the programs at designated facilities within the school district.

(c) Recent immigrant emergent bilingual students shall not remain enrolled in newcomer centers for longer than two years.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 27, 2026.

TRD-202603146
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: September 6, 2026
For further information, please call: (512) 463-9526

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TITLE 22. EXAMINING BOARDS

PART 30. TEXAS STATE BOARD OF EXAMINERS OF PROFESSIONAL COUNSELORS

CHAPTER 681. PROFESSIONAL COUNSELORS

SUBCHAPTER C. APPLICATION AND LICENSING

22 TAC §681.91

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Licensed Professional Counselors propose amendments to §681.91, relating to LPC Associate License.

Overview and Explanation of the Proposed Rule. The proposed amendments will clarify rule language regarding supervised LPC Associate practice into more plain, direct language. The amendments confirm that a person cannot provide counseling services without a proper license and that an Associate may own and operate a private practice only under supervision. The amendments require Associates to notify the supervisors of any pending complaints against the Associate, and to share a copy of remediation plans with supervisors.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Staff Services Officer, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 6, 2026, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§681.91. LPC Associate License.

(a) The Council may issue an LPC Associate license to an applicant who has:

(1) filed all application forms and paid all applicable fees;

(2) met all of the academic requirements for licensure;

(3) completed the required examinations with the requisite score as described in §681.72(a)(3) and (4) [~~681.72(a)(3) and (a)(4)~~] of this title [~~(relating to Required Application Materials)~~];

(4) entered into a supervisory agreement with a Licensed Professional Counselor Supervisor (LPC-S); and

(5) not completed the supervised experience described in §681.92 of this title [~~(relating to Experience Requirements (Internship))~~].

(b) An LPC Associate must comply with all provisions of the Act and Council rules.

(c) A [~~To practice counseling in Texas, a~~] person must obtain an LPC Associate license before practicing counseling in Texas under supervision to gain hours toward the supervised experience required for an LPC license [~~the person begins an internship or continues an internship~~]. Hours obtained by an unlicensed person in any setting will not count toward the supervised experience requirements.

(d) An LPC Associate may practice counseling [~~only as part of his or her internship and~~] only under the supervision of a Licensed Professional Counselor Supervisor (LPC-S). The LPC Associate shall not engage in independent practice, but may own and operate a private practice while under supervision.

(e) An LPC Associate may have no more than two (2) Council-approved LPC supervisors at any given time.

(f) An LPC Associate must maintain their LPC Associate license during his or her supervised experience.

(g) An LPC Associate license will expire 60 months from the date of issuance.

(h) An LPC Associate who does not complete the required supervised experience hours during the 60-month time period must reapply for licensure to continue accruing supervised experience.

(i) An LPC Associate must continue to be supervised after completion of the 3,000 hours of supervised experience and until the LPC Associate receives an [~~his or her~~] LPC license. Supervision is complete upon the LPC Associate receiving the LPC license.

(j) During supervised clinical experience, both supervisors and LPC Associates may have disciplinary actions taken against their licenses for violations of the Act, the Council Act, or council rules. Within 15 business days of receiving notice of a pending complaint against them, LPC Associates must notify their supervisors of the complaint.

(k) [~~(j)~~] The possession, access, retention, control, maintenance, and destruction of client records is the responsibility of the person or entity that employs or contracts with the LPC Associate, or in those cases where the LPC Associate is self-employed, the responsibility of the LPC Associate [~~LPC-Associate~~].

(l) [~~(k)~~] An LPC Associate must not employ a supervisor but may compensate the supervisor for time spent in supervision if the supervision is not a part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.

(m) If an LPC Associate receives a supervision remediation plan described in §681.93(e) of this title, the Associate must provide a copy of the remediation plan to any other current supervisors. The LPC Associate must also provide a copy of any unresolved remediation plans when beginning supervision with a new supervisor.

(n) [~~(l)~~] All billing documents for services provided by an LPC Associate must reflect the LPC Associate holds an LPC Associate license and is under supervision.

(o) [~~(m)~~] The LPC Associate must not represent himself or herself as an independent practitioner. The LPC Associate's name must be followed by a statement such as "supervised by (name of supervisor)" or a statement of similar effect, together with the name of the supervisor. This disclosure must appear on all marketing materials, billing documents, and practice related forms and documents where the LPC Associate's name appears, including websites and intake documents.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2026.

TRD-202603110
Darrel Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors
Earliest possible date of adoption: September 6, 2026
For further information, please call: (512) 305-7706

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22 TAC §681.92

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Licensed Professional Counselors propose amendments to §681.92, relating to Experience Requirements.

Overview and Explanation of the Proposed Rule. The proposed amendments will clarify terminology to distinguish between university-based internships and post-graduate supervised experience. The amendments also remove the outdated term "council-approved supervisor." The amendments require LPC associates to receive an average, rather than a minimum, of four hours per month of supervision. Finally, the amendments add a provision allowing an applicant with both a qualifying masters and doctoral degree to count supervised experience gained during the doctoral degree toward post-graduate supervised experience requirements.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Staff Services Officer, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 6, 2026, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§681.92. Experience Requirements.

(a) All applicants for LPC licensure must complete supervised experience acceptable to the Council of 3,000 clock-hours under a qualified LPC [~~Council-approved~~] supervisor.

(1) All supervised experience [~~internships physically~~] occurring in Texas must be completed under the supervision of an LPC with supervisor status. [a ~~Council-approved supervisor.~~]

(2) For all supervised experience [~~internships physically~~] completed in a jurisdiction other than Texas, the supervisor must be a person licensed or certified by that jurisdiction in a profession that provides counseling and who has the academic training and experience to supervise the counseling services offered by the Associate. The applicant must provide documentation acceptable to the Council regarding the supervisor's qualifications.

(b) The supervised experience must include at least 1,500 clock-hours of direct client counseling contact. Only actual time spent counseling may be counted.

(c) An LPC Associate may not complete the required 3,000 clock-hours of supervised experience in less than 18 months.

(d) The experience must consist primarily of the provision of direct counseling services within a professional relationship to clients by using a combination of mental health and human development principles, methods, and techniques to achieve the mental, emotional, physical, social, moral, educational, spiritual, or career-related development and adjustment of the client throughout the client's life.

(e) The LPC Associate must receive direct supervision consisting of an average [a ~~minimum~~] of four (4) hours per month of supervision in individual (up to two Associates) or group (three or more) settings while the Associate is engaged in counseling unless an extended leave of one month or more is approved in writing by the [~~Council approved~~] supervisor. No more than 50% of the total hours of supervision may be received in group supervision.

(f) Applicants with a master's degree that qualifies under §681.82 and §681.83 of this title, may count any supervision and experience (e.g., practicum, internship, externship) completed after conferral of the master's degree and as part of a doctoral program toward the supervision and experience requirements. The doctoral program must lead to a degree that qualifies under §681.82 and §681.83 of this title, before the Council will award credit for supervision and experience under this provision.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2026.

TRD-202603112
Darrel Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors
Earliest possible date of adoption: September 6, 2026
For further information, please call: (512) 305-7706

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22 TAC §681.93

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Licensed Professional Counselors propose amendments to §681.93, relating to Supervisor Requirements.

Overview and Explanation of the Proposed Rule. The proposed amendments will require an LPC supervisor to establish a plan for the custody and control of supervision records in the event of death or incapacity. The amendments prohibit a supervisor from receiving compensation for supervision if that supervision is already part of their paid responsibilities. The amendments also clarify the actions a supervisor must take if their supervisor status is revoked.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to licensees, applicants, and the general public because the proposed rule will provide greater clarity and consistency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

Request for Public Comments. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Staff Services Officer, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 6, 2026, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §503.2015 of the Tex. Occ. Code the Texas State Board of Examiners of Professional Counselors previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §503.2015 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 503 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§681.93. Supervisor Requirements

(a) A supervisor must keep a written record of each supervisory session in the file for the LPC Associate.

(1) The supervisory written record must contain:

(A) a signed and dated copy of the Council's supervisory agreement form for [~~each of~~] the LPC Associate [~~Associate's supervisors~~];

(B) a copy of the LPC Associate's online license verification noting the dates of issuance and expiration;

(C) fees and record of payments [~~payment~~];

(D) the date of each supervisory session;

(E) a record of an LPC Associate's leave of one month or more, documenting the supervisor's approval and signed by both the LPC Associate and the supervisor;

(F) a record of any concerns the supervisor discussed with the LPC Associate, including a written remediation plan as prescribed in subsection (e) of this section; and

(G) a record of acknowledgement that the supervisee is self-employed, if applicable.

(2) The supervisor must provide a copy of all records to the LPC Associate upon request. The supervisor shall establish a plan for the custody and control of the records of supervision for the LPC Associate in the event of the supervisor's death or incapacity or termination of the supervisor's practice.

(b) Both the LPC Associate [~~LPC-Associate~~] and the LPC supervisor [~~supervising LPC-S~~] are fully responsible for the professional counseling activities of the LPC Associate [~~LPC-Associate~~]. The LPC supervisor [~~LPC-~~ S] may be subject to disciplinary action for violations that relate only to the professional practice of counseling committed by the LPC Associate [~~LPC-Associate~~] which the LPC supervisor [~~LPC-S~~] knew about or due to the oversight nature of the supervisory relationship should have known about.

(1) Supervisors must review all provisions of the Act and Council rules in this chapter during supervision.

(2) The supervisor must ensure the LPC Associate is aware of and adheres to all provisions of the Act and Council rules.

(c) The supervisor must avoid any relationship that impairs the supervisor's objective, professional judgment.

(1) The supervisor may not be related to the LPC Associate within the second degree of affinity or within the third degree of consanguinity.

(2) The supervisor may not be an employee of his or her LPC Associate.

(3) A supervisor may not receive additional compensation for time spent in supervision if the supervision is part of the supervisor's responsibilities as a paid employee of an agency, institution, clinic, or other business entity.

(d) The supervisor must submit to the Council accurate documentation of the LPC Associate's supervised experience within 30 days of the end of supervision or the completion of the LPC Associate's required hours, whichever comes first.

(e) If a supervisor determines the LPC Associate may not have the counseling skills or competence to practice professional counseling under an LPC license, the supervisor will develop and implement a written plan for remediation of the LPC Associate, which must be reviewed and signed by the LPC Associate and maintained as part of the LPC Associate's file.

(f) The supervisor must ensure the supervised counseling experience of the LPC Associate were earned:

(1) after the LPC Associate license was issued; and

(2) in not less than 18 months of supervised counseling experience.

(g) A supervisor whose license has expired is no longer an approved supervisor and:

(1) must immediately inform all LPC Associates under his or her supervision and assist the LPC Associates in finding alternate supervisors; and

(2) must refund all supervisory fees for supervision after the expiration of the supervisor status.

(3) Hours accumulated under the person's supervision after the date of license expiration may not count as acceptable hours.

(h) Upon execution of a Council order for probated suspension, suspension, or revocation of the LPC license with supervisor status, the supervisor status is revoked. Hours accumulated under the person's supervision after the date the supervisor status is revoked may not count as acceptable hours, except upon a showing of good cause to the Council. A licensee whose supervisor status is revoked:

(1) must immediately inform all LPC Associates under his or her supervision and assist the LPC Associates in finding alternate supervisors; and

(2) must refund all supervisory fees for supervision after the date the supervisor status is revoked; and

(3) may reapply for supervisor status by submitting an application that shows the licensee has met the terms of any disciplinary order, has held their license in good standing for 60-months following the date of execution of the order, and has completed a 40-hour approved supervisor training course taken no earlier than the date of execution of the order. [~~hours accumulated under the person's supervision after the date of license expiration may not count as acceptable hours.~~]

(i) Supervision of an LPC Associate without having Council approved supervisor status is grounds for disciplinary action.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2026.

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Darrel Spinks
Executive Director
Texas State Board of Examiners of Professional Counselors
Earliest possible date of adoption: September 6, 2026
For further information, please call: (512) 305-7706

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PART 35. TEXAS STATE BOARD OF EXAMINERS OF MARRIAGE AND FAMILY THERAPISTS

CHAPTER 801. LICENSURE AND REGULATION OF MARRIAGE AND FAMILY THERAPISTS

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §801.2

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapist propose amendments to §801.2, relating to Definitions.

Overview and Explanation of the Proposed Rule. The proposed amendment will expand the definition of professional services enhanced through use of technology and change the term to "technology-supported services." The amendments would also add the term "virtual practice" and provide a definition.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Staff Services Officer, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 6, 2026, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.2. Definitions.

The following words and terms, when used in this chapter, have the following meanings unless the context indicates otherwise.

(1) Accredited institutions or programs--An institution of higher education accredited by an accrediting agency recognized by the Council for Higher Education Accreditation, the Texas Higher Education Coordinating Board, or the United States Department of Education.

(2) Act--Texas Occupations Code, Chapter 502, the Licensed Marriage and Family Therapist Act.

(3) Board--The Texas State Board of Examiners of Marriage and Family Therapists.

(4) Client--An individual, family, couple, group, or organization who receives or has received services from a person identified as a marriage and family therapist who is either licensed by the council or unlicensed.

(5) Council--The Texas Behavioral Health Executive Council.

(6) Council Act--Texas Occupations Code, Chapter 507, concerning the Texas Behavioral Health Executive Council.

(7) Council rules--22 Texas Administrative Code, Chapters 801 and 881 to 885.

(8) Direct clinical services to couples or family--Professional services provided to couples or families in which a clinician delivers therapeutic services with two or more individuals simultaneously or two or more individuals from the same family system within the same therapeutic session. Individuals must share an ongoing relationship beyond that which occurs in the therapeutic experience itself. Examples of ongoing relationships include family systems, couple systems, enduring friendship/community support systems, and residential, treatment or situationally connected systems.

(9) Endorsement--The process whereby the council reviews licensing requirements that a license applicant completed while under the jurisdiction of an out-of-state marriage and family therapy regulatory board. The council may accept, deny or grant partial credit for requirements completed in a different jurisdiction.

(10) Executive director--The executive director for the Texas Behavioral Health Executive Council.

(11) Family system--An open, on-going, goal-seeking, self-regulating, social system which shares features of all such systems. Certain features such as its unique structuring of gender, race, nationality and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, and life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, health and temperament) and its socio-cultural and historic position in its larger environment.

(12) Group supervision--Supervision that involves a minimum of three and no more than six marriage and family therapy supervisees or LMFT Associates in a clinical setting during the supervision hour.

(13) Independent Practice--The practice of providing marriage and family therapy services to a client without the supervision of an LMFT-S.

(14) Individual supervision--Supervision of no more than two marriage and family therapy supervisees or LMFT Associates in a clinical setting during the supervision hour.

(15) Jurisprudence exam--An online learning experience based on the Act, the Council Act, and council rules, and other state laws and rules relating to the practice of marriage and family therapy.

(16) License--A marriage and family therapist license, a marriage and family therapist associate license, a provisional or temporary marriage and family therapist license, or a provisional marriage and family therapist associate license.

(17) Licensed marriage and family therapist (LMFT)--As defined in §502.002 of the Occupations Code, a person who offers marriage and family therapy for compensation.

(18) Licensed marriage and family therapist associate (LMFT Associate)--As defined in §502.002 of the Occupations Code, an individual who offers to provide marriage and family therapy for compensation under the supervision of a supervisor approved by the executive council. The appropriate council-approved terms to refer to an LMFT Associate are: "Licensed Marriage and Family Therapist Associate" or "LMFT Associate." Other terminology or abbreviations like "LMFT A" are not council-approved and may not be used.

(19) Licensee--Any person licensed by the council.

(20) Licensure examination--The national licensure examination administered by the Association of Marital and Family Therapy Regulatory Boards (AMFTRB) or the State of California marriage and family therapy licensure examination.

(21) Marriage and family therapy--The rendering of professional therapeutic services to clients, singly or in groups, and involves the professional application of family systems theories and techniques in the delivery of therapeutic services to those persons. The term includes the evaluation and remediation of cognitive, affective, behavioral, or relational dysfunction or processes.

(22) Month--A calendar month.

(23) Person--An individual, corporation, partnership, or other legal entity.

(24) Recognized religious practitioner--A rabbi, clergyman, or person of similar status who is a member in good standing of and accountable to a legally recognized denomination or legally recognizable religious denomination or legally recognizable religious organization and other individuals participating with them in pastoral counseling if:

(A) the therapy activities are within the scope of the performance of regular or specialized ministerial duties and are performed under the auspices of sponsorship of an established and legally recognized church, denomination or sect, or an integrated auxiliary of a church as defined in 26 CFR §1.6033-2(h) (relating to Returns by exempt organizations (taxable years beginning after December 31, 1969) and returns by certain nonexempt organizations (taxable years beginning after December 31, 1980));

(B) the individual providing the service remains accountable to the established authority of that church, denomination, sect, or integrated auxiliary; and

(C) the person does not use the title of or hold himself or herself out as a licensed marriage and family therapist.

(25) Supervision--

(A) Supervision for licensure--The guidance or management in the provision of clinical services by a marriage and family therapy supervisee or LMFT Associate, which must be conducted for at least one supervision hour each week, except for good cause shown.

(B) Supervision, Council-ordered--For the oversight and rehabilitation in the provision of clinical services by a licensee under a Council Order, defined by the Order and the Council-Ordered Supervision Plan, and must be conducted as specified in the Council Order and Supervision Plan (generally in face-to-face, one-on-one sessions).

(26) Supervision hour--50 minutes.

(27) Supervisor--An LMFT with supervisor status meeting the requirements set out in §801.143 of this title. The appropriate council-approved terminology to use in reference to a Supervisor is: "Supervisor," "Licensed Marriage and Family Therapist Supervisor," "LMFT-S" or "LMFT Supervisor." Other terminology or abbreviations may not be used.

(28) Technology-supported [~~assisted~~] services--The use of electronic, digital, or internet-based tools and platforms to provide, augment, or support the provision of professional services. Tools and platforms evolve over time and may include virtual practice, artificial intelligence, video or audio conferencing, virtual or augmented reality, mobile applications, wearable devices, and machine learning or analytics. The use of such tools or platforms constitutes technology-supported services regardless of the frequency or duration of use and regardless of whether directly experienced by the client, such as through telehealth, assessment or treatment tools, or communication platforms, or used by a licensee to indirectly support the provision of professional services, such as through record keeping, treatment planning, note taking, or diagnostic decision-making. [~~Providing therapy or supervision with technologies and devices for electronic communication and information exchange between a licensee in one location and a client or supervisee in another location.~~]

(29) Therapist--A person who holds a license issued by the council.

(30) Virtual practice-- Providing therapy or supervision with technologies and devices for electronic communication and information exchange between a licensee in one location and a client or supervisee in another location.

(31) [~~(30)~~] Waiver--The suspension of educational, professional, or examination requirements for an applicant who meets licensing requirements under special conditions.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2026.

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Darrel Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: September 6, 2026
For further information, please call: (512) 305-7706

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SUBCHAPTER B. RULES OF PRACTICE

22 TAC §801.44

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapist propose amendments to §801.44, relating to Relationship with Clients.

Overview and Explanation of the Proposed Rule. The proposed amendment will substitute the term "virtual services" for "technology-assisted services" in conjunction with changes made to other rules.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Staff Services Officer, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 6, 2026, which is at least 30 days from the date of publication of this proposal in the *Texas Register.*

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.44. Relationship with Clients.

(a) A licensee must provide marriage and family therapy professional services only in the context of a professional relationship.

(b) A licensee must make known in writing to a prospective client the important aspects of the professional relationship, including the licensee's status as an LMFT or LMFT Associate, any probationary status or other restrictions placed on the licensee by the council, office procedures, after-hours coverage, fees, and arrangements for payment (which might affect the client's decision to enter into the relationship).

(c) A licensee must obtain an appropriate consent for treatment before providing professional services. A licensee must make reasonable efforts to determine whether the conservatorship, guardianship, or parental rights of the client have been modified by a court. Before the commencement of therapy services to a minor client who is named in a custody agreement or court order, a licensee must obtain and review a current copy of the custody agreement or court order in a suit affecting the parent-child relationship. A licensee must maintain these documents in the client's record and abide by the documents at all times. When federal or state statutes provide an exemption to secure consent of a parent or guardian before providing services to a minor, such as in Texas Family Code, Chapter 32, a licensee must follow the protocol set forth in such federal or state statutes.

(d) A licensee must make known in writing to a prospective client the confidential nature of the client's disclosures and the clinical record, including the legal limitations of the confidentiality of the mental health record and information.

(e) No commission or rebate or any other form of remuneration may be given or received by a licensee for the referral of clients for professional services. A licensee employed or under contract with a chemical dependency facility or a mental health facility must comply with the requirements in Texas Health and Safety Code, §164.006.

(f) A licensee may not exploit the licensee's position of trust with a client or former client.

(g) A licensee may not engage in activities that seek to meet the licensee's personal needs instead of the needs of the client.

(h) A licensee may not provide marriage and family therapy services to family members, personal friends, educational associates, business associates, or others whose welfare might be jeopardized by such a dual relationship.

(i) A licensee must set and maintain professional boundaries with clients and former clients.

(j) A licensee may disclose confidential information to medical or law enforcement personnel if the licensee determines there is a probability of imminent physical injury by the client to the client or others or there is a probability of immediate mental or emotional injury to the client.

(k) In group therapy settings, the licensee must take reasonable precautions to protect individuals from physical or emotional trauma resulting from interaction within the group.

(l) A licensee must make a reasonable effort to avoid non-therapeutic relationships with clients or former clients. A non-therapeutic relationship is an activity begun by either the licensee, the client, or former client for the purposes of establishing a social, business, or other relationship not related to therapy. A licensee must ensure the welfare of the client or former client if a non-therapeutic relationship arises.

(m) A licensee may not bill clients or third parties for services not actually rendered or as agreed to in writing.

(n) A licensee must end a professional relationship when it is reasonably clear the client is not benefiting from it. Upon ending a professional relationship, if the client still requires mental health services, the licensee must make reasonable efforts to provide a written referral to clients for appropriate services and to facilitate the transfer to appropriate care.

(o) A licensee who engages in virtual practice [~~technology-assisted services~~] must provide the client with the licensee's license number and information on how to contact the council by telephone, electronic communication, or mail. The licensee must comply with all other provisions of this chapter.

(p) A licensee may not offer services that are beyond the licensee's professional competency, and the services provided must be within accepted professional standards of practice and appropriate to the needs of the client. In emerging areas in which generally recognized standards for preparatory training do not exist, licensees must take reasonable steps to ensure the competence of their work and to protect clients, research participants, and other affected individuals from the potential for harm.

(q) A licensee must base all services on an assessment, evaluation, or diagnosis of the client.

(r) A licensee must evaluate a client's progress on a continuing basis to guide service delivery and must make use of supervision and consultation as indicated by the client's needs.

(s) A licensee may not knowingly offer or provide professional services to an individual concurrently receiving professional services from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent professional services, the licensee must immediately request release from the client to inform the other mental health services provider and strive to establish a positive and collaborative professional relationship.

(t) A licensee may not aid or abet the unlicensed practice of marriage and family therapy services by a person required to be licensed under the Act. A licensee must report to the council knowledge of any unlicensed practice.

(u) A licensee may not enter into a non-professional relationship with a client's family member or any person having a personal or professional relationship with a client, if the licensee knows or reasonably should have known such a relationship could be detrimental to the client.

(v) A licensee must refrain from providing services when they know or should know that their physical or mental health or lack of objectivity are likely to impair their competency or harm a client or other person with whom they have a professional relationship.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2026.

TRD-202603117
Darrel Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: September 6, 2026
For further information, please call: (512) 305-7706

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22 TAC §801.47

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapist propose amendments to §801.47, relating to Drug and Alcohol Use.

Overview and Explanation of the Proposed Rule. The proposed amendment will prohibit a licensee from encouraging the illegal use of drugs or alcohol by a supervisor or supervisee.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Staff Services Officer, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 6, 2026, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.47. Drug and Alcohol Use.

(a) A licensee may not use alcohol or drugs in a manner which adversely affects the licensee's ability to provide marriage and family therapy services.

(b) A licensee may not promote or encourage the illegal use of alcohol or drugs by a client, supervisee, or supervisor.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2026.

TRD-202603119

Darrel Spinks

Executive Director

Texas State Board of Examiners of Marriage and Family Therapists

Earliest possible date of adoption: September 6, 2026

For further information, please call: (512) 305-7706

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22 TAC §801.53

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapist propose amendments to §801.53, relating to Advertising and Announcements.

Overview and Explanation of the Proposed Rule. The proposed amendment will clarify that advertising restrictions apply regardless of the medium used for advertising.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Staff Services Officer, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 6, 2026, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.53. Advertising and Announcements.

(a) Information used by a licensee in any advertisement or announcement of services may not contain information which is false, misleading, deceptive, inaccurate, incomplete, out of context, or not readily verifiable. Advertising includes any announcement of services, letterhead, business cards, commercial products, and billing statements, whether presented in print, radio, digitally, or online. Only the highest academic degree earned from an accredited college or university or only the highest academic degree earned at a foreign university that has been determined to be equivalent to a degree from an accredited institution or program by a member of the National Association of Credential Evaluation Services and relevant to the profession of therapy or a therapy-related field shall be used when advertising or announcing therapeutic services to the public or in therapy-related professional representations. A licensee may advertise or announce his or her other degrees or equivalent degrees earned at foreign institutions from accredited colleges or universities if the subject of the degree is specified.

(b) False, misleading, or deceptive advertising or advertising that is not readily subject to verification includes advertising that:

(1) makes any material misrepresentation of fact or omits a fact necessary to make the statement as a whole not materially misleading;

(2) makes any representation likely to create an unjustified expectation about the results of a health care service or procedure;

(3) compares a health care professional's services with another health care professional's services unless the comparison can be factually substantiated;

(4) contains a testimonial that includes false, deceptive, or misleading statements, or fails to include disclaimers or warnings as to the credentials of the person making the testimonial;

(5) causes confusion or misunderstanding as to the credentials, education, or licensure of a health care professional;

(6) advertises or represents that health care insurance deductibles or co-payments may be waived or are not applicable to health care services to be provided if the deductibles or co-payments are required;

(7) advertises or represents that the benefits of a health benefit plan will be accepted as full payment when deductibles or co-payments are required; or

(8) advertises or represents in the use of a professional name a title or professional identification that is expressly or commonly reserved to or used by another profession or professional.

(c) The council imposes no restrictions on advertising by a licensee with regard to the use of any medium, the licensee's personal appearance, or the use of his or her personal voice, the size or duration of an advertisement by a licensee, or the use of a trade name. A licensee who retains or hires others to advertise or promote the licensee's practice remains responsible for the statements and representations made.

(d) All advertisements or announcements of therapeutic services including telephone directory listings by a licensee must clearly state his or her license status by the use of a title such as "Licensed Marriage and Family Therapist," "LMFT," "Licensed Marriage and Family Therapist Associate," "LMFT Associate," "Licensed Marriage and Family Therapist Supervisor," "LMFT-S," or "LMFT Supervisor."

(e) A licensee may not include in advertising or announcements any information or any reference to certification in a field outside of therapy or membership in any organization that may be confusing or misleading to the public as to the services or legal recognition of the licensee.

(f) An LMFT or LMFT Associate holding a provisional license must indicate the provisional status on all advertisements, billing, and announcements of treatment by the use of the term "Provisional Licensed Marriage and Family Therapist" or "Provisional Licensed Marriage and Family Therapist Associate," as appropriate.

(g) If a licensee becomes aware of a misuse of licensee's license certificate or misrepresentation of a licensee's services or the results of licensee's services, the licensee must report the misuse or misrepresentation to the Council within 30 days of becoming aware of the misuse or misrepresentation.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2026.

TRD-202603121
Darrel Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: September 6, 2026
For further information, please call: (512) 305-7706

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22 TAC §801.54

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapist propose amendments to §801.54, relating to Research and Publications.

Overview and Explanation of the Proposed Rule. The proposed amendment will require licensees to comply with all federal and state laws regarding use of human subjects in research.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Staff Services Officer, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 6, 2026, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.54. Research and Publications.

(a) In research with a human subject, a licensee is responsible for the welfare of the human subject throughout a project and must take reasonable precautions so the human subject suffers no injurious emotional, physical, or social effect.

(b) A licensee must disguise data obtained from a therapeutic relationship for the purposes of education or research to ensure full protection of the identity of the human subject client.

(c) When conducting and reporting research, a licensee must give recognition to previous work on the topic as well as observe all copyright laws.

(d) A licensee must give due credit through joint authorship, acknowledgment, footnote statements, or other appropriate means to those who have contributed significantly to the licensee's research or publication.

(e) A licensee must comply with all applicable state and federal laws, including 45 CFR pt. 46, regarding the protection of human subjects in research.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2026.

TRD-202603122
Darrel Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: September 6, 2026
For further information, please call: (512) 305-7706

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22 TAC §801.58

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapist propose amendments to §801.58, relating to Technology-Supported Services.

Overview and Explanation of the Proposed Rule. The proposed amendment will alter the term "technology-assisted services" to "technology-supported services" and adds the term "virtual services" as the more specific term to describe that practice. The amendments also clarify that licensees must follow the laws and rules of the state authority where clients are located when providing virtual services.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Staff Services Officer, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 6, 2026, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.58. Technology-Supported [~~Technology-Assisted~~] Services.

(a) Licensees who provide marriage and family therapy to clients or supervision to supervisees outside the State of Texas must comply with the laws and rules [~~of Texas and~~] of the out-of-state authority which govern the practice of marriage and family therapy.

(b) Licensees who provide treatment, consultation, and supervision using virtual practice [~~technology-assisted services~~] must meet the same standards of appropriate practice as licensees who practice in traditional (i.e., in-person) settings.

(c) In accordance with Texas Occupations Code, §502.251 (relating to License Required), a person may not practice as a marriage and family therapist unless the person holds a license under this chapter or is exempt under Texas Occupations Code, §502.004 (relating to Application of Chapter).

(d) A licensee may provide technology-supported [~~technology-assisted~~] services. To ensure the competent delivery of services by technology-supported [~~technology-assisted~~] means, a licensee must maintain an appropriate level of education, training, or experience in using relevant technology.

(e) A licensee may not render therapy using virtual practice- [~~technology-assisted services~~] without complying with the following at the onset of each session:

(1) fully verifying the location and identity of the client, to the most reasonable extent possible; and

(2) disclosing the identity of the licensee.

(f) Before providing technology-supported [~~technology-assisted~~] services, a licensee must determine whether a client is a minor. Upon determining that a client is a minor, and before providing technology-supported [~~technology-assisted~~] services, a licensee must obtain required consent from a parent or guardian and must verify the identity of the parent, guardian, or other person consenting to the minor's treatment.

(g) The licensee must determine if technology-supported [~~technology-assisted~~] service is an appropriate delivery of treatment or supervision, considering the professional, intellectual, or emotional needs of the client or supervisee.

(h) Informed consent must include, at a minimum, information that defines the technology-supported services used [~~electronic service delivery as practiced~~] by the licensee and the potential risks and ethical considerations. The licensee must obtain and maintain written or electronic evidence documenting appropriate client informed consent for the use of technology-supported [~~technology-assisted~~] services. The licensee must ensure that the informed consent complies with other informed consent requirements in this chapter and must include the following:

(1) identification of the client, the therapist, and the therapist's credentials;

(2) list of services provided by the licensee using technology-supported [~~technology-assisted~~] services;

(3) client agreement that the therapist determines on an on-going basis whether the condition being assessed or treated is appropriate for technology-supported [~~technology-assisted~~] services;

(4) details on security measures taken with the use of technology-supported [~~technology-assisted~~] services, as well as potential risks to privacy notwithstanding such measures;

(5) information regarding secure protocols and back-up plans in case of technical failure;

(6) the licensee's credentials or training to engage in technology-supported [~~technology-assisted~~] services, and contact information;

(7) risks and benefits of engaging in the use of technology;

(8) emergency procedures to follow when the therapist is not available;

(9) information collected and any passive tracking mechanisms used;

(10) third-party websites or services used by the licensee to facilitate technology-supported [~~technology-assisted~~] services; and

(11) an explanation of how records are maintained electronically, including encryption type and record security, and the archival storage period for transaction records.

(i) Therapists who use technology-supported [~~technology-assisted~~] services must meet or exceed applicable federal and state legal requirements of health information privacy, including compliance with the Health Insurance Portability and Accountability Act of 1996 (HIPAA), Public Law 104-191; The Health Information Technology for Economic and Clinical Health (HITECH) Act, 42 U.S.C. Chapter 156, Subchapter III; Texas Health and Safety Code, Chapter 181 (relating to Medical Records Privacy); and state privacy, confidentiality, and security rules.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2026.

TRD-202603124

Darrel Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: September 6, 2026
For further information, please call: (512) 305-7706

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SUBCHAPTER C. APPLICATIONS AND LICENSING

22 TAC §801.142

The Texas Behavioral Health Executive Council on behalf of the Texas State Board of Examiners of Marriage and Family Therapist propose amendments to §801.142, relating to Supervised Clinical Experience Requirements and Conditions.

Overview and Explanation of the Proposed Rule. The proposed amendment will substitute the term "virtual services" for "technology-assisted services" in conjunction with changes made to other rules.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Staff Services Officer, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 6, 2026, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

In accordance with §502.1515 of the Tex. Occ. Code the Texas State Board of Examiners of Marriage and Family Therapists previously voted and, by a majority, approved to propose this rule to the Executive Council. The rule is specifically authorized by §502.1515 of the Tex. Occ. Code which states the Board shall propose to the Executive Council rules regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice; continuing education requirements for license holders; and a schedule of sanctions for violations of this chapter or rules adopted under this chapter.

The Executive Council also proposes this rule in compliance with §507.153 of the Tex. Occ. Code. The Executive Council may not propose and adopt a rule regarding the qualifications necessary to obtain a license; the scope of practice, standards of care, and ethical practice for a profession; continuing education requirements; or a schedule of sanctions unless the rule has been proposed by the applicable board for the profession. In this instance, the underlying board has proposed this rule to the Executive Council. Therefore, the Executive Council has complied with Chapters 502 and 507 of the Texas Occupations Code and may propose this rule.

Lastly, the Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§801.142. Supervised Clinical Experience Requirements and Conditions.

An applicant for LMFT must complete supervised clinical experience acceptable to the council.

(1) The LMFT Associate must have completed a minimum of two years of work experience in marriage and family therapy, which includes a minimum of 3,000 hours of supervised clinical practice. The required 3,000 hours must include at least 1,500 hours providing direct clinical services, of which:

(A) no more than 750 hours may be provided via virtual practice [~~technology-assisted services~~] (as approved by the supervisor); and

(B) at least 500 hours must be providing direct clinical services to couples or families.

(2) The remaining required hours, not covered by paragraph (1) of this section [~~above~~], may come from related experiences, including workshops, public relations, writing case notes, consulting with referral sources, etc.

(3) An LMFT Associate must obtain a minimum of 200 hours of supervision by an LMFT-S during the required 3,000 hours, and at least 100 of these hours must be individual supervision.

(A) An LMFT Associate, when providing services, must receive a minimum of one hour of supervision every week, except for good cause shown.

(B) Supervision may be provided in person or by live video or, if the supervisor determines that in-person or live video supervision is not accessible, by telephone.

(C) An LMFT Associate may apply up to 100 graduate internship supervision hours toward the required 200 hours of supervision required for licensure as an LMFT.

(4) For an LMFT applicant who begins the graduate degree program used for their license application before September 1, 2025, staff may count graduate internship hours exceeding the requirements set in §801.114(b)(8) of this title toward the minimum requirement of at least 3,000 hours of supervised clinical practice under the following conditions.

(A) No more than 500 excess graduate internship hours, of which no more than 250 hours may be direct clinical services to couples or families, completed under a Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) accredited graduate program may be counted toward the minimum requirement of at least 3,000 hours of supervised clinical practice.

(B) No more than 400 excess graduate internship hours, of which no more than 200 hours may be direct clinical services to couples or families, completed under a non-COAMFTE-accredited graduate program may be counted toward the minimum requirement of at least 3,000 hours of supervised clinical practice.

(5) An LMFT Associate may practice marriage and family therapy in any setting under supervision, such as a private practice, public or private agencies, hospitals, etc.

(6) During the post-graduate, supervised clinical experience, both the supervisor and the LMFT Associate may have disciplinary actions taken against their licenses for violations of the Act, the Council Act, or council rules. If an LMFT Associate is informed of a pending complaint against them, they must notify each of their supervisors of the complaint.

(7) Within 30 days of initiating supervision with any LMFT supervisor, an LMFT Associate must submit to the council a Supervisory Agreement Form.

(8) An LMFT Associate may have no more than two LMFT supervisors at a time, unless given prior approval by the council or its designee.

(9) Applicants with a master's degree that qualifies under §801.112 and §801.113 of this title, may count any supervision and experience (e.g., practicum, internship, externship) completed after conferral of the master's degree and as part of a doctoral program, toward the supervision and experience requirements set out in §801.142. A doctoral program must lead to a degree that qualifies under §801.112 and §801.113 of this title, before the Council will award credit for supervision and experience under this provision.

(10) If an LMFT Associate receives a remediation plan, as described in §801.143(f)(4) of this title, the Associate must provide a copy of the remediation plan to any other current or future supervisors, as well as any relevant documentation regarding successful completion of the plan.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2026.

TRD-202603126
Darrel Spinks
Executive Director
Texas State Board of Examiners of Marriage and Family Therapists
Earliest possible date of adoption: September 6, 2026
For further information, please call: (512) 305-7706

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PART 41. TEXAS BEHAVIORAL HEALTH EXECUTIVE COUNCIL

CHAPTER 882. APPLICATIONS AND LICENSING

SUBCHAPTER A. LICENSE APPLICATIONS

22 TAC §882.6

The Texas Behavioral Health Executive Council proposes amendments to §882.6, relating to Limitations on Number of Examination Attempts.

OVERVIEW AND EXPLANATION OF THE PROPOSED RULE. The proposed amendment will remove the requirement that license applicants who fail a licensure exam three times must submit a study plan to receive approval to retest, while keeping a limit on the number of exam attempts in a 12-month period.

FISCAL NOTE. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

PUBLIC BENEFIT. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

PROBABLE ECONOMIC COSTS. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

LOCAL EMPLOYMENT IMPACT STATEMENT. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

REQUIREMENT FOR RULES INCREASING COSTS TO REGULATED PERSONS. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

GOVERNMENT GROWTH IMPACT STATEMENT. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

TAKINGS IMPACT ASSESSMENT. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Staff Services Officer, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/index.html. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 6, 2026, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

APPLICABLE LEGISLATION. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

STATUTORY AUTHORITY. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§882.6. Limitations on Number of Examination Attempts.

[~~(a)~~] An applicant taking [~~may take~~] an examination [~~administered or~~] required by the Council is limited to the number of attempts in a 12-month period authorized by the entity administering the exam to preserve exam integrity [~~no more than three times~~]. Failure to pass an examination prior to the expiration date of an application for license with the Council [~~subject to this rule within three attempts~~], will result in expiration [~~an automatic denial~~] of the [~~an~~] application and may require reapplying for authorization to sit for the examination.

[~~(b) Notwithstanding subsection (a) of this section, an applicant whose application is denied under this rule may reapply for licensure, but will not be allowed or approved to sit for the exam again until the applicant has submitted a detailed study plan designed to address the known or suspected areas of deficiency. The study plan must be approved by the relevant member board before authorization will be given to retake the examination.~~]

[~~(c) Examinations which do not require pre-authorization by the Council to take, are not subject to this rule.~~]

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Darrel Spinks
Executive Director
Texas Behavioral Health Executive Council
Earliest possible date of adoption: September 6, 2026
For further information, please call: (512) 305-7706

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SUBCHAPTER C. DUTIES AND RESPONSIBILITIES

22 TAC §882.36

The Texas Behavioral Health Executive Council proposes amendments to §882.36, relating to Compliance with State and Federal Law.

Overview and Explanation of the Proposed Rule. The proposed amendment will align the Council's rule with Senate Bill 1188, passed by the 89th Legislature. The proposed amendments would also incorporate additional statutory provisions relevant to the Council's professions.

Fiscal Note. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

Public Benefit. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

Probable Economic Costs. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

Small Business, Micro-Business, and Rural Community Impact Statement. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

Regulatory Flexibility Analysis for Small and Micro-Businesses and Rural Communities. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

Local Employment Impact Statement. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

Requirement for Rules Increasing Costs to Regulated Persons. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

Government Growth Impact Statement. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

Takings Impact Assessment. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Staff Services Officer, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/index.html. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 6, 2026, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

Applicable Legislation. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

Statutory Authority. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§882.36. Compliance with State and Federal Law.

Licensees comply with all applicable state and federal laws affecting the practice of marriage and family therapy, professional counseling, psychology, or social work including, but not limited to:

(1) Health and Safety Code:[~~, Chapter 611, Mental Health Records;~~]

(A) Chapter 181, Medical Records Privacy;

(B) Chapter 183, Electronic Health Records; and

(C) Chapter 611, Mental Health Records;

(2) Family Code:

(A) Chapter 32, Consent to Medical, Dental, Psychological and Surgical Treatment,

(B) Chapter 34, Authorization Agreement for Nonparent Adult Caregiver;

(C) Chapter 35, Temporary Authorization for Care of Minor Child;

(D) Chapter 35A, Temporary Authorization for Inpatient Mental Health Services for Minor Child;

(E) Chapter 107, Special Appointments, Child Custody Evaluations and Adoption Evaluations;

(F) [~~(B)~~] Chapter 153, Rights to Parents and Other Conservators to Consent to Treatment and Access to Child's Records, and

(G) [~~(C)~~] Chapter 261, Duty to Report Child Abuse and Neglect;

(3) Human Resource Code, Chapter 48, Duty to Report Elder Abuse and Neglect;

(4) Civil Practice and Remedy Code, Chapter 81, Duty to Report Sexual Exploitation of a Patient by a Mental Health Services Provider;

(5) Insurance Code as it relates to submission of billing and third-party payments for mental health services provided by a licensee;

(6) Code of Criminal Procedure:[~~, Chapter 46B, Incompetency to Stand Trial, and Chapter 46C, Insanity Defense;~~]

(A) Chapter 46B, Incompetency to Stand Trial; and

(B) Chapter 46C, Insanity Defense;

(7) Occupations Code:[~~, Chapter 102, Solicitation of Patients; Chapter 104, Healing Art Practitioners; Chapter 105, Unprofessional Conduct; and Chapter 113, Mental Health Telemedicine and Telehealth Services;~~]

(A) Chapter 102, Solicitation of Patients;

(B) Chapter 104, Healing Art Practitioners;

(C) Chapter 105, Unprofessional Conduct;

(D) Chapter 113, Mental Health Telemedicine and Telehealth Services; and

(E) Chapter 116, Training Course on Human Trafficking Prevention;

(8) Education Code, Chapter 51, Duty to Report Sexual Harassment and Assault, Dating Violence, and Stalking; [~~and~~]

(9) 18 United States Code §1347 Health Care Fraud[~~.~~]; and

(10) Penal Code:

(A) Chapter 35, Insurance Fraud; and

(B) Chapter 35A, Medicaid Fraud.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2026.

TRD-202603106
Darrel Spinks
Executive Director
Texas Behavioral Health Executive Council
Earliest possible date of adoption: September 6, 2026
For further information, please call: (512) 305-7706

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CHAPTER 884. COMPLAINTS AND ENFORCEMENT
SUBCHAPTER D. DUTIES AND RESPONSIBILITIES

22 TAC §884.31

The Texas Behavioral Health Executive Council proposes amendments to §884.31, relating to Notice to the Public of Complaint Process and Access to Records.

OVERVIEW AND EXPLANATION OF THE PROPOSED RULE. The proposed amendment will align the Council's rule with House Bill 4224, passed by the 89th Legislature.

FISCAL NOTE. Darrel D. Spinks, Executive Director of the Executive Council, has determined that for the first five-year period the proposed rule is in effect, there will be no additional estimated cost, reduction in costs, or loss or increase in revenue to the state or local governments as a result of enforcing or administering the rule. Additionally, Mr. Spinks has determined that enforcing or administering the rule does not have foreseeable implications relating to the costs or revenues of state or local government.

PUBLIC BENEFIT. Mr. Spinks has determined for the first five-year period the proposed rule is in effect there will be a benefit to applicants, licensees, and the general public because the proposed rule will provide greater clarity, consistency, and efficiency in the Executive Council's rules. Mr. Spinks has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help the Executive Council protect the public.

PROBABLE ECONOMIC COSTS. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no additional economic costs to persons required to comply with this rule.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT STATEMENT. Mr. Spinks has determined for the first five-year period the proposed rule is in effect, there will be no adverse effect on small businesses, micro-businesses, or rural communities.

REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO-BUSINESSES AND RURAL COMMUNITIES. Mr. Spinks has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities. Thus, the Executive Council is not required to prepare a regulatory flexibility analysis pursuant to §2006.002 of the Tex. Gov't Code.

LOCAL EMPLOYMENT IMPACT STATEMENT. Mr. Spinks has determined that the proposed rule will have no impact on local employment or a local economy. Thus, the Executive Council is not required to prepare a local employment impact statement pursuant to §2001.022 of the Tex. Gov't Code.

REQUIREMENT FOR RULES INCREASING COSTS TO REGULATED PERSONS. The proposed rule does not impose any new or additional costs to regulated persons, state agencies, special districts, or local governments; therefore, pursuant to §2001.0045 of the Tex. Gov't Code, no repeal or amendment of another rule is required to offset any increased costs. Additionally, no repeal or amendment of another rule is required because the proposed rule is necessary to protect the health, safety, and welfare of the residents of this state and because regulatory costs imposed by the Executive Council on licensees is not expected to increase.

GOVERNMENT GROWTH IMPACT STATEMENT. For the first five-year period the proposed rule is in effect, the Executive Council estimates that the proposed rule will have no effect on government growth. The proposed rule does not create or eliminate a government program; it does not require the creation or elimination of employee positions; it does not require the increase or decrease in future legislative appropriations to this agency; it does not require an increase or decrease in fees paid to the agency; it does not create a new regulation; it does not expand an existing regulation; it does not increase or decrease the number of individuals subject to the rule's applicability; and it does not positively or adversely affect the state's economy.

TAKINGS IMPACT ASSESSMENT. Mr. Spinks has determined that there are no private real property interests affected by the proposed rule. Thus, the Executive Council is not required to prepare a takings impact assessment pursuant to §2007.043 of the Tex. Gov't Code.

REQUEST FOR PUBLIC COMMENTS. Comments on the proposed rule may be submitted by mail to Brenda Skiff, Staff Services Officer, Texas Behavioral Health Executive Council, 1801 Congress Ave., Ste. 7.300, Austin, Texas 78701 or via https://www.bhec.texas.gov/proposed-rule-changes-and-the-rulemaking-process/index.html. The deadline for receipt of comments is 5:00 p.m., Central Time, on September 6, 2026, which is at least 30 days from the date of publication of this proposal in the *Texas Register*.

APPLICABLE LEGISLATION. This rule is proposed pursuant to the specific legal authority granted to the Executive Council by H.B. 1501, 86th Leg., R.S. (2019).

STATUTORY AUTHORITY. The rule is proposed under Tex. Occ. Code, Title 3, Subtitle I, Chapter 507, which provides the Texas Behavioral Health Executive Council with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

Additionally, the Executive Council proposes this rule pursuant to the authority found in §507.152 of the Tex. Occ. Code which vests the Executive Council with the authority to adopt rules necessary to perform its duties and implement Chapter 507 of the Tex. Occ. Code.

The Executive Council also proposes this rule under the authority found in §2001.004 of the Tex. Gov't Code which requires state agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

No other code, articles or statutes are affected by this section.

§884.31. Notice to the Public of Complaint Process and Access to Records.

(a) Licensees shall provide notice to consumers and service recipients [~~the public~~] (e.g., patients, clients) how to: [~~that complaints can be filed with the Council by any of the following methods:~~]

(1) contact the Council and file a complaint; [~~on a registration form, application, written contract for services, or other intake paperwork required by licensees prior to delivering services;~~]

(2) request a copy of their mental health records; and [~~on a sign prominently displayed in the licensee's place of business or location where services are delivered. The sign must be printed on paper of no less than 8-1/2 inches by 11 inches in size;~~]

(3) file a consumer complaint with the Office of the Attorney General's Consumer Protection Division, pursuant to Section 181.105 of the Health and Safety Code. [~~in a prominent and easily accessible location on the licensee's website; or~~]

[~~(4) in a bill for services.~~]

(b) Notice must be posted in a prominent and easily accessible location on the licensee's website. Notice must also be provided on a sign prominently displayed in the licensee's place of business or location where services are delivered. If a licensee has neither a physical location nor website then notice must be provided by one of the following methods:

(1) in the intake paperwork required by licensees prior to delivering services; or

(2) in a bill for services.

(c) [~~(b)~~] The notice required by this rule must include the Council's name, web address, mailing address, and telephone number, as well as the [~~following~~] statement in the attached graphic or a statement similar in nature and content. [~~:~~]

Figure: 22 TAC §884.31(c)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 23, 2026.

TRD-202603108

Darrel Spinks

Executive Director

Texas Behavioral Health Executive Council

Earliest possible date of adoption: September 6, 2026

For further information, please call: (512) 305-7706

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TITLE 26. HEALTH AND HUMAN SERVICES

PART 1. HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 550. LICENSING STANDARDS FOR PRESCRIBED PEDIATRIC EXTENDED CARE CENTERS

SUBCHAPTER F. INSPECTIONS AND VISITS

26 TAC §550.1301

The executive commissioner of the Texas Health and Human Services Commission (HHSC) proposes an amendment to §550.1301, concerning Inspections and Visits.

BACKGROUND AND PURPOSE

The purpose of the proposal is to update the rule to limit survey frequency from annually to every three years in alignment with current licensure renewal and inspection timeframe requirements in Texas Health and Safety Code §248A.053 and §248A.102. The changes reduce administrative and operational burdens for providers associated with annual inspections.

This proposal also deletes or updates obsolete references and clarifies existing language to improve overall readability.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §550.1301(a) and (b) clarifies language and improves readability. The edits to subsection (c) clarify that, except for visits outlined in subsection (e), HHSC does not announce inspections as well as investigations and visits described in subsection (a). The update to subsection (d) removes language referencing at least one licensing inspection annually because an inspection will now be conducted at least once every three years. The update to subsection (e) reorganizes the subsection for clarity and improved readability and includes restructuring paragraph (2) to new subsection (f).

FISCAL NOTE

Victoria Grady, Deputy Chief, Finance, has determined that for each year of the first five years that the rule will be in effect, there will be an estimated reduction in cost to state government as a result of enforcing and administering the rule as proposed. HHSC is unable to determine the reduction in costs because it is unknown how many providers will apply for a renewal license every three years. Enforcing or administering the rule does not have foreseeable implications relating to costs or revenues of local government.

GOVERNMENT GROWTH IMPACT STATEMENT

HHSC has determined that during the first five years that the rule will be in effect:

(1) the proposed rule will not create or eliminate a government program;

(2) implementation of the proposed rule will not affect the number of HHSC employee positions;

(3) implementation of the proposed rule will result in no assumed change in future legislative appropriations;

(4) the proposed rule will not affect fees paid to HHSC;

(5) the proposed rule will not create new regulations;

(6) the proposed rule will limit existing regulations;

(7) the proposed rule will not change the number of individuals subject to the rules; and

(8) the proposed rule will not affect the state's economy.

SMALL BUSINESS, MICRO-BUSINESS, AND RURAL COMMUNITY IMPACT ANALYSIS

Victoria Grady has also determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities because there is no requirement to alter current business practices.

LOCAL EMPLOYMENT IMPACT

The proposed rule will not affect a local economy.

COSTS TO REGULATED PERSONS

Texas Government Code §2001.0045 does not apply to this rule because the rule does not impose a cost on regulated persons.

PUBLIC BENEFIT AND COSTS

Michelle Dionne-Vahalik, Deputy Executive Commissioner for Long-Term Care Regulation, has determined that for each year of the first five years the rule is in effect, the public benefit will be reducing administrative and operational burden on providers, allowing providers to focus resources on daily operations and care while HHSC maintains appropriate oversight.

Victoria Grady has also determined that for the first five years the rule is in effect, there are no anticipated economic costs to persons required to comply with the proposed rule because HHSC only extends survey timeframes, and there are no new fees or costs imposed on those required to comply.

TAKINGS IMPACT ASSESSMENT

HHSC has determined that the proposal does not restrict or limit an owner's right to the owner's property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043.

PUBLIC COMMENT

Written comments on the proposal, including information related to the cost, benefit, or effect of the proposed rule, as well as any applicable data, research, or analysis, may be submitted to Rules Coordination Office, P.O. Box 13247, Mail Code 4102, Austin, Texas 78711-3247, or street address 4601 West Guadalupe Street, Austin, Texas 78751; or emailed to *HHSRulesCoordinationOffice@hhs.texas.gov*.

To be considered, comments must be submitted no later than 31 days after the date of this issue of the *Texas Register*. Comments must be (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered before 5:00 p.m. on the last working day of the comment period; or (3) emailed before midnight on the last day of the comment period. If the last day to submit comments falls on a holiday, comments must be postmarked, shipped, or emailed before midnight on the following business day to be accepted. When emailing comments, please indicate "Comments on Proposed Rule 26R045" in the subject line.

STATUTORY AUTHORITY

The amendment is authorized by Texas Government Code §524.0151, which provides that the executive commissioner of HHSC shall adopt rules for the operation and provision of services by the health and human services agencies; and Texas Health and Safety Code §248A.101, which authorizes the executive commissioner of HHSC to adopt rules that are necessary to implement Chapter 248A, to protect the health and safety of the public, and to ensure the health, safety and comfort of the minors served.

The amendment implements Texas Government Code §524.0151 and Texas Health and Safety Code Chapter 248A.

§550.1301. Inspections and Visits.

(a) HHSC conducts [~~performs~~] inspections, follow-up visits, and compliance investigations. HHSC also investigates allegations [~~, investigations~~] of abuse, neglect, and exploitation. Any [~~, and~~] other contact visit may occur [~~visits~~] at a center as deemed appropriate or as required to determine a center's compliance with this chapter.

(b) An inspector or an inspection team [~~inspection~~] may conduct [~~be conducted by~~] an inspection or visit. The number of inspectors and other team members conducting an inspection or visit may depend [~~inspector or by a team depending~~] on the purpose of the inspection, the size of a center, and other factors.

(c) HHSC does not announce inspections, investigations, or visits described in subsection (a) of this section, except for visits outlined in subsection (e) of this section.

(d) HHSC conducts [~~at least one~~] unannounced licensing inspections at least once every three years from [~~inspection annually after issuance of~~] a license issue date.

(e) HHSC may visit a center for purposes other than the reasons described in subsection (a) of this section, including to assess or consult with staff on: [~~.~~]

(1) [~~HHSC may visit a center to consult with a center's staff to determine~~] how a center may update or expand the center's physical space; [~~may be expanded or upgraded or determine the progress of a center's construction or repairs, equipment installation or repairs, systems installation or repairs, or when conditions or emergencies arise, including fire, windstorm, or malfunctioning or nonfunctioning of electrical or mechanical systems.~~]

(2) construction progress;

(3) repair progress;

(4) equipment installation or repairs;

(5) systems installation or repairs;

(6) emergencies, to include natural disasters such as fires, floods, windstorms; or

(7) emergencies due to malfunctioning or nonfunctioning electrical or mechanical systems.

(f) [~~(2)~~] HHSC may announce visits that are not for a purpose described in subsection (a) of this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 27, 2026.

TRD-202603144

Karen Ray

Chief Counsel

Health and Human Services Commission

Earliest possible date of adoption: September 6, 2026

For further information, please call: (512) 438-3161

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 367. AGRICULTURAL WATER CONSERVATION PROGRAM

31 TAC §§367.2 - 367.7, 367.12 - 367.14, 367.16

The Texas Water Development Board (TWDB) proposes an amendment to 31 Texas Administrative Code (TAC) §§367.2 - 367.7, 367.12 - 367.14, and 367.16.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENT.

The TWDB proposes to add a definition of "agricultural" to the text of Chapter 367. Additionally, the TWDB proposes to add the phrase throughout the chapter to clarify that the use of the Agricultural Water Conservation Fund is only for conservation agricultural projects or programs. This rulemaking defines agricultural and clarifies the type of conservation projects or programs eligible for an agricultural water conservation grant to stakeholders.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS.

Section 367.2. Definition.

The TWDB proposes to add a definition for the term "agricultural" to read as follows:

Related to the production of food, fiber, or other agricultural projects.

(A) The term includes:

(i) the cultivation of soil to produce crops;

(ii) horticulture, floriculture, or viticulture;

(iii) aquaculture as defined in Texas Agriculture Code, §134.001;

(iv) forestry; and

(v) the raising or keeping of livestock or poultry.

(B) The term does not include activities that are primarily industrial, municipal, or commercial in nature.

The TWDB also proposes to correct a typo from "an" to "a" in the definition of "construction." The TWDB proposes to add the phrase "agricultural" to modify "conservation program or project" in the definition of "eligible cost." Because of the addition of a new definition, and to maintain the definitions in alphabetical order, the TWDB proposes to renumber all definitions in this section.

Section 367.3. Eligible Uses of the Fund.

The TWDB proposes to add the term "agricultural" to modify the terms "conservation program" and "conservation project" throughout this section. This addition will clarify that the

Agricultural Water Conservation Fund may only be used to provide funding for agricultural conservation programs and agricultural conservation projects.

Section 367.4. Determination of Availability.

The TWDB proposes to add the term "agricultural" to modify "conservation program or project." This is a conforming change to be consistent with changes throughout the chapter.

Section 367.5. Application Requirements.

The TWDB proposes to add the term "agricultural" to modify "conservation program or project." This is a conforming change to be consistent with changes throughout the chapter.

Section 367.6. Application with Engineering Report.

The TWDB proposes to add the term "agricultural" to modify "conservation program or project." This is a conforming change to be consistent with changes throughout the chapter.

Section 367.7. Application with Environmental Assessment.

The TWDB proposes to add the term "agricultural" to modify "conservation program or project." This is a conforming change to be consistent with changes throughout the chapter.

Section 367.12. Construction Requirements.

The TWDB proposes to add the term "agricultural" to modify "conservation program or project." This is a conforming change to be consistent with changes throughout the chapter. The TWDB also proposes to fix a typo from "insure" to "ensure" for clarity purposes.

Section 367.13. Amendments to a Program or Project.

The TWDB proposes to add the term "agricultural" to modify "conservation program or project." This is a conforming change to be consistent with changes throughout the chapter.

Section 367.14. Reporting Requirements for Loans.

The TWDB proposes to add the term "agricultural" to modify "conservation program or project." This is a conforming change to be consistent with changes throughout the chapter.

Section 367.16. Conditions prior to Execution.

The TWDB proposes to add the term "agricultural" to modify "conservation program or project." This is a conforming change to be consistent with changes throughout the chapter.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS (Texas Government Code §2001.024(a)(4))

Ms. Georgia Sanchez, Chief Financial Officer, has determined that there will be no fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there is no expected additional cost to state or local governments resulting from their administration.

These rules are not expected to result in reductions in costs to either state or local governments. There is no change in costs because these rules simply provide clarification for a requirement that already applied to this fund. These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules. Additionally, there are no foreseeable implications relating to state or local governments' costs or revenue resulting from these rules.

Because these rules will not impose a cost on regulated persons, the requirement included in Texas Government Code, §2001.0045 to repeal a rule does not apply. Furthermore, the requirement in §2001.0045 does not apply because these rules are necessary to protect water resources of this state as authorized by the Texas Water Code.

The TWDB invites public comment regarding this fiscal note. Written comments on the fiscal note may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

PUBLIC BENEFITS AND COSTS (Texas Government Code §2001.024(a)(5))

Ms. Georgia Sanchez also has determined that for each year of the first five years the proposed rulemaking is in effect, the public will benefit from the rulemaking as it clarifies requirements for TWDB grantees and borrowers for the Agricultural Water Conservation Fund. Ms. Georgia Sanchez also has determined that for each year of the first five years the proposed rulemaking is in effect, the rules will not impose an economic cost on persons required to comply with the rule as participation in TWDB financial assistance programs is voluntary.

ECONOMIC AND LOCAL EMPLOYMENT IMPACT STATEMENT (Texas Government Code §§2001.022, 2006.002); REGULATORY FLEXIBILITY ANALYSIS (Texas Government Code §2006.002)

The TWDB has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect because it will impose no new requirements on local economies. The TWDB also has determined that there will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of enforcing this rulemaking. The TWDB also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION (Texas Government Code §2001.0225)

The TWDB reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and determined that the rulemaking is not subject to Texas Government Code §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to clarify requirements for TWDB grantees and borrowers for the Agricultural Water Conservation Fund.

Even if the proposed rule were a major environmental rule, Texas Government Code §2001.0225 still would not apply to this rulemaking because Texas Government Code §2001.0225 only applies to a major environmental rule, the result of which is to: (1) exceed a standard set by federal law, unless the rule is specifically required by state law; (2) exceed an express requirement of state law, unless the rule is specifically required by federal law; (3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or (4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: (1) does not exceed any federal law; (2) does not exceed an express requirement of state law; (3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and (4) is not proposed solely under the general powers of the agency, but rather Texas Water Code §17.912. Therefore, this proposed rule does not fall under any of the applicability criteria in Texas Government Code §2001.0225.

The TWDB invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT (Texas Government Code §2007.043)

The TWDB evaluated this proposed rule and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rule is to clarify requirements for TWDB grantees and borrowers for the Agricultural Water Conservation Fund. The proposed rule would substantially advance this stated purpose by aligning definitions with agency and industry practice and providing greater detail on eligibility.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007, does not apply to this proposed rule because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code §2007.003(b)(4). The TWDB is the agency that implements the Agricultural Water Conservation Program.

Nevertheless, the TWDB further evaluated this proposed rule and performed an assessment of whether it constitutes a taking under Texas Government Code Chapter 2007. Promulgation and enforcement of this proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden, restrict, or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule clarifies requirements for TWDB grantees and borrowers for the Agricultural Water Conservation Fund. Therefore, the proposed rule does not constitute a taking under Texas Government Code, Chapter 2007.

GOVERNMENT GROWTH IMPACT STATEMENT (Texas Government Code §2001.0221)

The TWDB reviewed the proposed rulemaking in light of the government growth impact statement requirements of Texas Government Code §2001.0221 and has determined, for the first five years the proposed rule would be in effect, the proposed rule will not: (1) create or eliminate a government program; (2) require the creation of new employee positions or the elimination of existing employee positions; (3) require an increase or decrease in future legislative appropriations to the agency; (4) require an increase or decrease in fees paid to the agency; (5) create a new regulation; (6) expand, limit, or repeal an existing regulation; (7) increase or decrease the number of individuals subject to the rule's applicability; or (8) positively or adversely affect this state's economy.

SUBMISSION OF COMMENTS (Texas Government Code §2001.024(a)(7))

Written comments on the proposed rulemaking may be submitted by mail to Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. If sent via email, all public comments should be sent directly to rulescomments@twdb.texas.gov. Please do not submit comments through any third-party forms or websites. Receipt of third-party submissions cannot be guaranteed. Comments will be accepted until 5:00 p.m. of the 31st day following publication in the *Texas Register*. Include "Chapter 367" in the subject line of any comments submitted.

STATUTORY AUTHORITY (Texas Government Code §2001.024(a)(3))

The amendment is proposed under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State, and also under the authority of Texas Water Code §17.912.

This rulemaking affects Water Code, Chapter 17.

§367.2. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agricultural--Related to the production of food, fiber, or other agricultural projects.

(A) The term includes:

(i) the cultivation of soil to produce crops;

(ii) horticulture, floriculture, or viticulture;

(iii) aquaculture as defined in Texas Agriculture Code, §134.001;

(iv) forestry; and

(v) the raising or keeping of livestock or poultry.

(B) The term does not include activities that are primarily industrial, municipal, or commercial in nature;

(2) [~~(1)~~] Board--The governing body of the Texas Water Development Board.

(3) [~~(2)~~] Conservation program--A program that is:

(A) an agricultural water conservation technical assistance program, including a program for an on-farm soil and water conservation plan developed jointly by a landowner, an operator, and a local soil and water conservation district as provided by Subchapter H, Chapter 201, Agriculture Code;

(B) a research, demonstration, technology transfer, or educational program relating to agricultural water use and conservation;

(C) a precipitation enhancement program in an area of the state where the program, in the board's judgment, would be most effective;

(D) administered by a state agency that provides funding to a political subdivision or person for a conservation project; or

(E) administered by a political subdivision that provides loans to a person for a conservation project.

(4) [~~(3)~~] Conservation project--A project that:

(A) improves water use efficiency of water delivery and application on existing irrigation systems;

(B) prepares irrigated land for conversion to dryland conditions;

(C) prepares dryland for more efficient use of natural precipitation;

(D) purchases and installs on public or private property devices designed to indicate the amount of water withdrawn for irrigation purposes; or

(E) prepares and maintains land to be used for brush control activities in areas of the state where those activities in the board's judgment would be most effective, including activities conducted under Chapter 203, Agriculture Code.

(5) [~~(4)~~] The actual construction, alteration, or repair of a fixed improvement to real property requiring the preparation of plans, designs or drawings that are required to be prepared by a [~~an~~] professional engineer licensed in the State of Texas.

(6) [~~(5)~~] Eligible cost--Costs of the capital equipment, materials, labor, preparation, installation, or administration directly associated with implementing and completing an agricultural [a] conservation program or project.

(7) [~~(6)~~] Eligible lending institution--a financial institution that makes commercial loans, is either a designated depository of state funds by the Texas comptroller of public accounts, herein referred to as a state depository, or an institution of the Farm Credit System headquartered in this state, and agrees to participate in a linked deposit program established under Water Code §17.905 and is willing to agree to provide collateral equal to the amount of linked deposits placed with it.

(8) [~~(7)~~] Executive administrator--The executive administrator of the Texas Water Development Board, or an authorized representative of the executive administrator.

(9) [~~(8)~~] Fund--The agricultural water conservation fund authorized by Section 50-d, Article III, of the Texas Constitution.

(10) [~~(9)~~] Linked Deposit--a deposit governed by a linked deposit agreement between the board and an eligible lending institution that requires that:

(A) the eligible lending institution pay interest to the board on the deposit at a rate equal to the asking yield for a U.S. Treasury note with a twelve-month maturity as of the date five days preceding the submission of all the documents required of the eligible lending institution to the executive administrator requesting a linked deposit agreement;

(B) the state not withdraw any part of the deposit except as according to the terms of the linked deposit agreement and the terms of this division; and

(C) the eligible lending institution agree to lend the value of the deposit to a person at a rate not to exceed the interest paid by the eligible lending institution to the board plus four percent;

(11) [~~(10)~~] Linked Deposit Agreement--a written agreement between the board, acting through the executive administrator, and an eligible lending institution providing for the deposit by the board of an amount of money from the fund with the eligible lending institution executed pursuant to the authority and according to the conditions of this chapter.

(12) [~~(11)~~] Person--An individual, corporation, partnership, association, or other legal entity that is not a political subdivision.

(13) [~~(12)~~] Pledged security--Means the securities authorized by these rules and the linked deposit agreement to secure the board's deposit of funds with the eligible lending institution.

(14) [~~(13)~~] Political subdivision--Includes a municipality, county, district or authority created under the Texas Constitution Article III, Section 52, or Article XVI, Section 59, an institution of higher education as defined by §61.003, Education Code, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating under Texas Water Code Chapter 67.

§367.3. Eligible Uses of the Fund.

To the extent authorized by Water Code §17.899, the board may use money in the fund to:

(1) provide a grant to a state agency to pay the eligible costs for an agricultural [a] conservation program or agricultural conservation project, including an agricultural [a] conservation program that provides funding to a political subdivision or person for an agricultural [a] conservation project;

(2) provide a grant or loan to a political subdivision to pay the eligible costs for an agricultural [a] conservation program or agricultural conservation project; and

(3) provide a linked deposit to an eligible lending institution for a loan to a person for an agricultural [a] conservation project pursuant to the terms of §§367.15 - 367.20 of this chapter.

§367.4. Determination of Availability.

(a) - (c) (No change.)

(d) Eligible applicants may also submit applications for agricultural conservation programs or projects at any time. The executive administrator shall periodically submit all such unsolicited applications for review and consideration by the board.

§367.5. Application Requirements.

(a) To be considered by the board, all applications submitted for money from the fund must include:

(1) the official name and address of the applicant;

(2) the constitutional and statutory authority creating the applicant and under which the applicant currently operates;

(3) the names and addresses of the individual or individuals with the legal authority to perform the acts of the entity, and title of position;

(4) an affidavit from the individual with the authority to act on behalf of the applicant, or a certified copy of a resolution adopted or minutes approved by the governing body with the authority to act on behalf of the applicant, which:

(A) identifies the amount that the applicant is requesting;

(B) authorizes the submission of an application on behalf of the entity; and

(C) designates an authorized representative to submit the application and perform all reasonable and necessary action in support of the application and, if approved by the board, to perform the terms and conditions of the award of money from the fund;

(5) the name, address, and title of the designated representative;

(6) a map and description of the geographic area in which the applicant is authorized to conduct such actions as are necessary for the proposed agricultural conservation program or project;

(7) a description of the proposed agricultural conservation program or project that includes:

(A) the geographic area in which it will occur; and

(B) the time schedule in which it will occur;

(8) a proposed budget for the agricultural conservation program or project that identifies:

(A) the total cost;

(B) the cost of each significant element of the program or project; and

(C) other sources of funds, if any;

(9) the predicted water conservation and other benefits that will be created from the proposed agricultural conservation program or project;

(10) a conservation plan and program of work or other sufficient description of the applicant's commitment to water conservation;

(11) identification of a water conservation water management strategy identified in the most recent applicable regional water plan or state water plan that it will be implemented by the use of the grant; and

(12) such additional information that may be requested by the executive administrator or the board.

(b) To be considered by the board, in addition to the requirements of subsection (a) of this section, all applications submitted for loans from the fund must include:

(1) fiscal information with a plan for repayment to the board of the loan; and

(2) if the political subdivision intends to use the board's loan to provide loans to persons;

(A) a description of the types of agricultural conservation projects which will be funded by the loans provided to the political subdivision's applicants;

(B) the standards applied by the political subdivision for the applications, security, repayment, and financial integrity for the loans;

(C) the procedures for considering and approving loan applications submitted to the political subdivision and to assess the financial integrity of the person applying for the loan; and

(D) a sample or adequate description of the agreement pursuant to which the funds will be provided.

§367.6. Application with Engineering Report.

In addition to the requirements of §367.5 of this chapter (relating to Application Requirements), if the funds provided by the board will be used for construction of an agricultural [a] conservation project, to be considered by the board, the application shall include an engineering feasibility report signed and sealed by a professional engineer licensed in the State of Texas which shall contain:

(1) description and purpose of the project;

(2) the cost of the project;

(3) a description of alternatives considered and reasons for the selection of the project proposed;

(4) sufficient information to evaluate the engineering feasibility;

(5) maps and drawings as necessary to locate and describe the project area;

(6) a statement as to whether the proposed construction will require surface or subsurface disturbance of the soil or alter the existing vegetation; and

(7) such other information or data as necessary to evaluate the project and requested by the executive administrator.

§367.7. Application with Environmental Assessment.

(a) In addition to the requirements of §367.5 and §367.6 of this chapter (relating to Application Requirements and Application with Engineering Report, respectively), if the funds provided by the board will be used for construction of an agricultural [a] conservation project which will require surface or subsurface disturbance of the soil or alter the existing vegetation, the applicant shall conduct an environmental assessment in compliance with this section. The purpose of this section is to provide the executive administrator with sufficient information to inform the board whether a proposed project has been adequately reviewed by the regulatory agencies and whether such review provides a reasonable level of certainty that the project will comply with state and federal environmental regulations.

(b) - (f) (No change.)

§367.12. Construction Requirements.

(a) This section applies to agricultural conservation projects financed by the board through a grant or loan and which include construction.

(b) Prior to the release of funds for construction of an agricultural [a] conservation project, an approved applicant shall:

(1) submit to the executive administrator engineering plans and specifications, which shall be as detailed as would be required for submission to contractors bidding on the work and which shall be consistent with the engineering feasibility information submitted with the application;

(2) obtain written approval from the executive administrator of the submitted engineering plans and specifications; and

(3) for projects which the approved applicant will execute construction contracts, prior to receiving bids and awarding the contract, obtain executive administrator approval of the contract documents, such documents to include:

(A) provisions assuring compliance with the board's rules and all relevant statutes;

(B) provisions providing for the district to retain a minimum of 5.0% of the progress payments otherwise due to the contractor until construction is substantially complete and reduction in the retainage is authorized by the executive administrator;

(C) a contractor's act of assurance form to be executed by the contractor which shall warrant compliance by the contractor with all laws of the State of Texas and all rules and published policies of the board; and

(D) any additional conditions that may be requested by the executive administrator.

(c) (No change.)

(d) After the construction contract is awarded, the approved applicant shall:

(1) ensure [~~insure~~] adequate inspection of the project by a registered professional engineer;

(2) obtain assurance from the engineer that the work is performed in a satisfactory manner in accordance with the approved plans and specifications, other engineering design or permit documents, approved alterations, and in accordance with sound engineering principles and construction practices;

(3) allow the executive administrator to inspect the construction and materials of any project at any time; and

(4) take corrective action as necessary to complete the project in accordance with approved plans and specifications or contract documents.

(e) - (f) (No change.)

§367.13. Amendments to a Program or Project.

Any substantial alteration which involves a change in the basic purpose of an agricultural conservation [a] program or project, or which involves an increase in the loan commitment of the board for the project, must be approved in writing by the board. All other changes to the agricultural conservation program or project must be approved by the executive administrator.

§367.14. Reporting Requirements for Loans.

A political subdivision that receives an agricultural [a] conservation program or project loan shall:

(1) upon request of the executive administrator, promptly provide certified copies of all minutes, operating budgets, monthly operating statements, contracts with borrowers, audit reports and other documents concerning the agricultural conservation program or project loan; and

(2) upon request of the executive administrator or at the end of each state fiscal year, shall provide to the executive administrator a report on the loans made to borrowers during the preceding state fiscal year, in a format specified by the executive administrator.

§367.16. Conditions Prior to Execution.

(a) Before the executive administrator may execute a linked deposit agreement, a lending institution shall submit to the executive administrator:

(1) the application of a person determined by the eligible lending institution to be eligible and creditworthy to receive a loan according the criteria of the institution;

(2) a draft loan agreement with such person that:

(A) identifies the principal amount of the loan which shall not exceed $250,000;

(B) identifies the interest rate to be paid by the borrower which shall not exceed the interest rate paid by the eligible lending institution to the board plus four percent;

(C) includes a repayment schedule which identifies the dates on which payments are due from the loan recipient to the lending institution;

(D) limits the use of the funds to an agricultural [a] conservation project certified pursuant to subsection (a)(3) of this section; and

(E) contains such other terms and conditions determined by the eligible lending institution in its sole discretion to be reasonable for the purposes of a private loan agreement;

(3) a certification from:

(A) the eligible lending institution of the interest rate applicable to the proposed loan;

(B) a director of a soil and water conservation district for the district in which the project is located certifying that:

(i) the loan recipient has a soil and water conservation plan approved by the district; and

(ii) the project furthers or implements such plan; and

(4) such other information or documentation as determined by the executive administrator to be reasonable and necessary to fulfill the objectives of this chapter.

(b) (No change.)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 24, 2026.

TRD-202603139
Ashley Harden
General Counsel
Texas Water Development Board
Earliest possible date of adoption: September 6, 2026
For further information, please call: (512) 475-1673

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 17. STATE PENSION REVIEW BOARD

CHAPTER 610. FUNDING SOUNDNESS RESTORATION PLANS

40 TAC §§610.13 - 610.15, 610.20, 610.21, 610.30 - 610.32

The Texas Pension Review Board (Board) proposes amendments to 40 Texas Administrative Code (TAC) §§610.13 - 610.15, 610.20, 610.21 and 610.30 - 610.32, regarding the Funding Soundness Restoration Plans for public retirement systems and their associated governmental entities.

The purpose of the proposed amendments is to improve the clarity of the rules, increase compliance with the statutory funding soundness restoration plan (FSRP) requirement, and update program requirements following the passage of the initial statutory deadline of September 1, 2025.

EXPLANATION OF AND JUSTIFICATION FOR THE RULES

In 2015, the legislature passed House Bill 3310, creating the FSRP requirement for public retirement systems with a funding period greater than 40 years. In 2021, the legislature passed House Bill 3898, which updated the FSRP provisions, reducing the triggering funding period to greater than 30 years and adding additional requirements for public retirement systems and their associated governmental entities to formally adopt plans to improve their funding. The Board adopted 40 Texas Administrative Code Chapter 610 in 2022 to implement the updated statutory requirements. The Board recently completed its first quadrennial review of Chapter 610 and now proposes amendments to §§610.13 - 610.15, 610.20, 610.21 and 610.30 - 610.32 to clarify and improve compliance with the FSRP requirement.

SECTION-BY-SECTION SUMMARY

The proposed rules amend 40 TAC §610.13. The proposed rules make a minor grammatical correction.

The proposed rules amend 40 TAC §610.14. The proposed rules would modify the applicability for the rules to specify that the rules apply to systems that submitted a voluntary FSRP only if the system did so before September 1, 2025.

The proposed rules amend 40 TAC §610.15. The proposed rules would require that public retirement systems required by statute to provide a notice of inadequate financing to its members provide a copy of the notice to the Board.

The proposed rules amend 40 TAC §610.20. The proposed rules would modify the applicability for the rules to specify that the rules apply to systems that submitted a legacy FSRP only if the system did so before September 1, 2025. The proposed rules would amend rule language pertaining to the allowable degree of variation from corridors to remove any appearance of subjectivity. The proposed amendments also make minor technical corrections.

The proposed rules amend 40 TAC §610.21. The proposed rules would make a minor technical correction.

The proposed rules amend 40 TAC §610.30. The proposed rules would specify that a system may submit an FSRP before the deadline so long as the Board reviews and determines the plan is sufficient to amortize the unfunded liability within the statutorily required timeframe.

The proposed rules amend 40 TAC §610.31. The proposed rules would clarify that systems and sponsors must submit statutorily required progress updates and that the progress update must be submitted using a form prescribed by the Board. The proposed amendments also strike outdated references.

The proposed rules amend 40 TAC §610.32. The proposed rules would amend rule language pertaining to the allowable degree of variation from corridors to remove any appearance of subjectivity and would reflect that voluntary FSRPs were previously authorized.

FISCAL IMPACT ON STATE AND LOCAL GOVERNMENT

David Fee, Chief Actuary, has determined that for each year of the first five years the proposed rules are in effect, there are no additional costs or reduction in costs to state or local government as a result of enforcing or administering the proposed rules.

LOCAL EMPLOYMENT IMPACT STATEMENT

Because Mr. Fee has determined that the proposed rules will not affect a local economy, the agency is not required to prepare a local employment impact statement under Texas Government Code Section 2001.022.

PUBLIC BENEFITS

Mr. Fee has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit is to improve efficiency of and compliance with the Funding Soundness Restoration Plan requirement and other related requirements, helping to ensure the long-term financial health of Texas public retirement systems.

PROBABLE ECONOMIC COSTS TO PERSONS REQUIRED TO COMPLY WITH PROPOSAL

Mr. Fee has determined that for each year of the first five-year period the proposed rules are in effect, there are no anticipated economic costs to persons who are required to comply with the proposed rules.

FISCAL IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES

There will be no adverse economic effect on small businesses, micro-businesses, or rural communities as a result of the proposed rules. Because the agency has determined that the proposed rule will have no adverse economic effect on small businesses, micro-businesses, or rural communities, preparation of an Economic Impact Statement and a Regulatory Flexibility Analysis, as detailed under Texas Government Code Section 2006.002, is not required.

ONE-FOR-ONE REQUIREMENT FOR RULES WITH A FISCAL IMPACT

The proposed rules do not have a fiscal note that imposes a cost on regulated persons, including another state agency, a special district, or a local government. Therefore, the agency is not required to take any further action under Texas Government Code Section 2001.0045.

GOVERNMENT GROWTH IMPACT STATEMENT

Pursuant to Texas Government Code Section 2001.0221, the agency provides the following Government Growth Impact Statement for the proposed rules. For each year of the first five years the proposed rules will be in effect, the agency has determined the following:

(1) The proposed rules do not create or eliminate a government program.

(2) Implementation of the proposed rules does not require the creation of new employee positions or the elimination of existing employee positions.

(3) Implementation of the proposed rules does not require an increase or decrease in future legislative appropriations to the agency.

(4) The proposed rules do not require an increase or decrease in fees paid to the Board.

(5) The proposed rules do not create a new regulation.

(6) The proposed rules do not expand, limit, or repeal an existing regulation.

(7) The proposed rules do not increase or decrease the number of individuals subject to the rules' applicability.

(8) The proposed rules do not positively or adversely affect the state economy.

TAKINGS IMPACT ASSESSMENT

The Pension Review Board has determined that no private real property interests are affected by the proposed rules, and the proposed rules do not restrict, limit, or impose a burden on an owner's rights to his or her private real property that would otherwise exist in the absence of government action. As a result, the proposed rules do not constitute a taking or require a takings impact assessment under Texas Government Code Section 2007.043.

PUBLIC COMMENTS AND INFORMATION RELATED TO THE COST, BENEFIT, OR EFFECT OF THE PROPOSED RULES

The Pension Review Board is requesting public comments on the proposed rules and information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis. Any information that is submitted in response to this request must include an explanation of how and why the submitted information is specific to the proposed rules. Please do not submit copyrighted, confidential, or proprietary information.

Comments on the proposed rules and responses to the request for information may be submitted by email to rules@prb.texas.gov or by mail to Tamara Aronstein, General Counsel, Texas Pension Review Board, P.O. Box 13498, Austin, Texas 78711-3498. The deadline for comments is 30 days after publication in the *Texas Register*.

STATUTORY AUTHORITY

The proposed rules are proposed under Texas Government Code Sections 802.2015(h) and 802.2016(h), which authorize the Pension Review Board to adopt rules as necessary to implement the Funding Soundness Restoration Plan requirement.

The statutory provisions affected by the proposed rules are those set forth in Texas Government Code Sections 802.106, 802.2015, and 802.2016.

§610.13. Definitions.

When used in this chapter, the terms listed below shall have the following meanings:

(1) "Board" means State Pension Review Board.

(2) "Compliance corridor" means the acceptable range of variation from a system's baseline for the system's funding period or funded ratio, as further described in board rules that concern a system's adherence to a funding soundness restoration plan, and related figures.

(3) "Formulated" means finalized and approved by the appropriate decision-making bodies.

(4) "Funded ratio" has the meaning assigned by Texas Government Code §802.2011.

(5) "Funding period" means the length of time it would take to fully fund the unfunded actuarial accrued liability under the current actuarial assumption based on the greater of the actuarial value of assets or the market value of assets.

(6) "Governmental entity" has the meaning assigned by §802.1012, Texas Government Code.

(7) "Legacy funding soundness restoration plan" or "L-FSRP" means a funding soundness restoration plan formulated prior to September 1, 2021, accepted by the board, and governed by the law as it existed immediately before that date.

(8) "Public retirement system" has a meaning as defined by §801.001(2) and §802.001(3), Texas Government Code but shall not include defined contribution plans as defined by §802.001(1-a), Texas Government Code or retirement systems consisting exclusively of volunteers organized under the Texas Local Fire Fighters' Retirement Act as defined by §802.002(d), Texas Government Code.

(9) "Revised funding soundness restoration plan" or "R-FSRP" means a funding soundness restoration plan prepared under §802.2015(e-1) or §802.2016(e-1), Texas Government Code, which includes additional components compared to a funding soundness restoration plan prepared under §802.2015(e) or §802.2016(e), Texas Government Code.

(10) "Revised funding soundness restoration plan exemption" or "revision exemption" means the applicable section of either Texas Government Code §§802.2015(d-1) or 802.2016(d-1) under which qualifying systems prepare a funding soundness restoration plan under Texas Government Code §§802.2015(e) or 802.2016(e) rather than a revised funding soundness restoration plan.

(11) "Target date" means the 10th anniversary of the date on which the final version of a legacy funding soundness restoration plan was agreed to as required by law as it existed immediately before September 1, 2021.

(12) "Valuation date" means the date as of which the actuarial accrued liability and the actuarial value of assets are determined, often the first or last day of the plan year as specified in the valuation.

(13) "Voluntary funding soundness restoration plan" or "V-FSRP" means a funding soundness restoration plan formulated, submitted, and completed under either Texas Government Code §802.2015 or §802.2016 as it stands after September 1, 2021, without the system or associated governmental entity first becoming subject to the requirement.

§610.14. Applicability.

This chapter applies to every public retirement system and its associated governmental entity that is subject to Texas Government Code §802.2015 or §802.2016 and to a system or associated governmental entity that chose [~~choose~~] to submit a voluntary funding soundness restoration plan prior to September 1, 2025.

§610.15. Required Disclosure of Inadequate Financing Arrangement to Plan Members.

(a) A notification to the associated governmental entity under Texas Government Code §802.2015(c) or §802.2016(c) regarding an actuarial valuation that indicates the public retirement system's actual contributions are not sufficient to amortize the unfunded liability within 30 years, means that the financing of the system is inadequate for the purposes of §802.106(d), Texas Government Code.

(b) The disclosure to members of an actuarial determination of an inadequate financing arrangement required under Texas Government Code §802.106(d) shall be accompanied by a notice that the system is subject to the funding soundness restoration plan requirement under Texas Government Code §802.2015(c) or §802.2016(c) when a system becomes subject to the requirement.

(c) A system required to provide a disclosure to members of an actuarial determination of an inadequate financing arrangement shall provide the disclosure to its members with the next annual benefit statement and a copy of the disclosure to the board within 30 days of sending the disclosure to members.

§610.20. Criteria for Determining Adherence to a Legacy Funding Soundness Restoration Plan.

(a) A public retirement system is adhering to a legacy funding soundness restoration plan if the system's actuarial valuation shows:

(1) the funding period is expected to fall within 40 years by the target date, [~~and~~] so long as the system's funding period continues to shorten while the system's funding period is above 40 years and does not increase to a length of time greater than 40 years after falling below 40 years; or

(2) an increase in funding period compared to the previous valuation, and the system's actuarial valuation shows that, between the valuation date and the system's target date, the system's funding period or funded ratio remains within the compliance corridor adopted in board rule. If the system's funding period is infinite, only the funded ratio will be evaluated to determine compliance for the purposes of this paragraph.

(b) A public retirement system with a legacy funding soundness restoration plan may submit a projection to serve as the baseline for the purpose of this subsection prior to September 1, 2025. This projection must show the projected funded ratio and funding period for each year beginning with the current date until the target date. For any years the system's funding period is projected to be above 40 years, the corridor will be based on the baseline. For any years the system's funding period is projected to be below 40 years, the compliance corridor will be based on a minimum of 40 years. If the system does not submit such a projection to the board for this purpose, the board will determine adherence to the legacy funding soundness restoration plan using a baseline in which a system's funding period must decrease by one year every consecutive year as measured on the anniversary of the date on which the final version of the funding soundness restoration plan was agreed to as required by law.

(c) The allowable degree of variation from the baseline will begin at five percent for a funded ratio corridor or ten years for a fund-

ing period corridor and will decrease over the period between the current date and the target date as described by Figure: 40 TAC §610.20(c). A system would be considered compliant if the funded ratio exceeds the minimum threshold or funding period falls below the maximum threshold [~~plan experience exceeds a corridor in a favorable way~~]. The board will use each system's baseline to provide a compliance corridor unique to that system based on their funding period and funded ratio, using the corridor sizes specified in these rules.
Figure: 40 TAC §610.20(c) (No change.)

§610.21. Completion of a Legacy Funding Soundness Restoration Plan.

(a) A public retirement system adhering to a legacy funding soundness restoration plan may continue following that plan until the earlier of:

(1) the target date; or,

(2) the date of an actuarial valuation that indicates the system's funding period is at or below 30 years.

(b) Actuarial [~~actuarial~~] valuations with valuation dates during a time that a system is adhering to a legacy funding soundness restoration plan shall not be counted towards triggering a funding soundness restoration plan under Texas Government Code §802.2015(c) or §802.2016(c) as it stands after September 1, 2021, until after the applicable date described in subsection (a) of this section when the system completes the legacy funding soundness restoration plan.

§610.30. Submission and Completion Criteria for the Funding Soundness Restoration Plan Requirement.

(a) The board will consider a retirement system to have submitted a funding soundness restoration plan when the board receives:

(1) a completed form approved by the board for this purpose;

(2) any supplementary or explanatory documents necessary to illustrate how the system's funding period will be within the maximum by the prescribed date, including a revised funding policy; and

(3) documentation of the date the plan was adopted by both the governing body of the system and of the governmental entity. Documentation may include the minutes or other record of an open meeting when each adoption occurred.

(b) The board will consider a retirement system to have completed the funding soundness restoration plan requirement when the board receives an actuarial valuation or separate analysis under Texas Government Code §§802.2015(e-2) or 802.2016(e-2) and the staff actuary or board actuary determines the actuarial valuation or separate analysis complies with actuarial standards of practice. An actuarial valuation and separate analysis are equivalent for the purposes of Texas Government Code §§802.2015(e-2) or 802.2016(e-2) and either may be submitted in lieu of the other during the respective submission periods, provided it includes the components required by the applicable subsection.

(c) For a system submitting a revised funding soundness restoration plan with specific changes required by statute, "automatic risk-sharing mechanisms" means changes to plan provisions, including adjustments to benefit levels or contribution amounts, upon meeting or exceeding certain criteria established beforehand without needing additional approval at the time of the change. The plan shall specify how the changes to the contribution amounts are split between the employer and members. At least one of the automatic risk-sharing mechanisms included in the plan must be an adjustable benefit or contribution mechanism.

(d) A system or associated governmental entity shall submit to the board the materials related to a funding soundness restoration plan that adequately fulfill the analysis and documentation requirements in statute and rules to be considered compliant. If the board determines the materials are inadequate, the board will notify the system of the determination with an explanation of the reason and may request additional information. The system shall submit additional materials consistent with the board's instructions. The board would consider a system noncompliant if the board does not receive the system's funding soundness restoration plan; if the system fails to comply with an approved funding soundness restoration plan, revised funding soundness restoration plan, or other type of funding soundness restoration plan; or if the system fails to submit to the board the funding soundness restoration plan materials that adequately satisfy the requirements in statute and board rules within the appropriate time periods for those materials.

(e) A system may submit a funding soundness restoration plan to the board prior to the second anniversary of the valuation date stated in the actuarial valuation that required formulation of the plan, so long as the board reviews the plan and determines it is sufficient to amortize the unfunded actuarial accrued liability within 30 years of the second anniversary of the triggering valuation.

§610.31. Compliance with Progress Updates.

(a) A system adhering to a legacy funding soundness restoration plan shall continue providing progress updates every two years rather than submitting progress updates in accordance with this section.

(b) The first draft of a plan submitted as a part of a progress update under Texas Government Code §§802.2015(f) or 802.2016(f) must, at minimum, include a projected timeline for enactment of the plan, and identify the action that various entities must take to approve or enact the plan, such as votes that may be necessary in accordance with the system's governing statute. Each subsequent progress update should include a draft plan that contains updated information and that demonstrates movement toward a complete and finalized plan.

(c) A description of changes submitted as part of a progress update to fulfill the requirements of Texas Government Code §§802.2015(f) or 802.2016(f) must include the projected actuarial impact of each change under consideration on the retirement system's funding period and funded ratio.

[~~(d) A system must submit updates consistent with subsections (b) and (c) of this section to the board starting September 1, 2023, and every six months thereafter until the system submits a funding soundness restoration plan to the board and the board determines it is compliant if the system:~~]

[~~(1) received an actuarial valuation dated prior to September 1, 2021, that triggered a funding soundness restoration plan requirement; and~~]

[~~(2) does not have a board-approved legacy funding soundness restoration plan.~~]

(d) [~~(e)~~] A system and the [~~or~~] associated governmental entity that receives an actuarial valuation [~~dated after September 1, 2021,~~] that triggers a funding soundness restoration plan, including a revised funding soundness restoration plan, must submit updates to the board beginning not later than the first anniversary of the valuation date of the actuarial valuation that required formulation of the plan and every subsequent six-month period until the plan is submitted as described in Texas Government Code §§802.2015(f) or 802.2016(f).

(e) The system and associated governmental entity shall submit progress updates in a form prescribed by the board.

~~[(f) A system or associated governmental entity preparing a voluntary funding soundness restoration plan is not required to submit progress updates to the board.]~~

§610.32. Revised Funding Soundness Restoration Plan Exemption.

(a) A public retirement system is adhering to a funding soundness restoration plan formulated between September 1, 2021, and September 1, 2025, if, during the period between the date the funding soundness restoration plan is adopted by the system and governmental entity and the 10th anniversary of the applicable date for the funding soundness restoration plan to be formulated and the system to be within the maximum funding period prescribed by Texas Government Code §§802.2015(e)(2) or 802.2016(e)(2), the system's actuarial valuation shows the system's funding period or funded ratio remain within the applicable compliance corridors established in this section. If the system's funding period is infinite, only the funded ratio will be evaluated to determine compliance for the purposes of this subsection.

(b) The baseline for a system's funding period compliance corridor will be 30 years, and the baseline for the funded ratio corridor will be the actuarial projection of the system's expected future actuarial value of assets and liabilities submitted as part of an actuarial valuation or separate analysis in accordance with either Texas Government Code §§802.2015(e-2)(1) or 802.2016(e-2)(1).

(c) The allowable degree of variation from the baseline will begin at five percent for a funded ratio corridor or ten years for a funding period corridor and will decrease over the 10-year period as described by Figure: 40 TAC §610.32(c). A system would be considered compliant if the funded ratio exceeds the minimum threshold or funding period falls below the maximum threshold [~~plan experience exceeds the corridor in a favorable way~~]. The board will use each system's baseline to provide a compliance corridor unique to that system based on their amortization period and funded ratio, using the corridor sizes specified in these rules.
Figure: 40 TAC §610.32(c) (No change.)

(d) A system may submit a voluntary funding soundness restoration plan prior to September 1, 2025 without first becoming subject to the requirement, for the purposes of qualifying for the revision exemption, provided the V-FSRP is consistent with all applicable submission requirements in statute and rules.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on July 24, 2026.

TRD-202603141
Tamara Aronstein
General Counsel
State Pension Review Board
Earliest possible date of adoption: September 6, 2026
For further information, please call: (512) 463-1736

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 800, relating to General Administration:

Subchapter A. General Provisions, §800.2

Subchapter B. Allocations, §§800.57, 800.58, and 800.68

Subchapter F. Interagency Matters, §800.201 and §800.205

Subchapter G. Petition for Adoption of Rules, §§800.251 - 800.255

Subchapter H. Vendor Protests, §800.301

Subchapter I. Enhanced Contract Monitoring, §§800.350 - 800.352

Subchapter L. Workforce Diploma Pilot Program, §800.502

TWC proposes the repeal of the following sections of Chapter 800, relating to General Administration:

Subchapter B. Allocations, §800.69

Subchapter F. Interagency Matters, §§800.202 - 800.204

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 800 rule change is to make technical, clarifying, and conforming updates throughout the chapter. These revisions modernize the text by repealing obsolete rules, updating references, and ensuring consistency across TWC's rules.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§800.2. Definitions

Section 800.2 is amended to update a reference to federal regulation in the definition of "Board," rearrange the order of the definitions of "Trade Act Services" and "Texas Workforce Investment Council," and make minor stylistic changes.

SUBCHAPTER B. ALLOCATIONS

TWC proposes the following amendments to Subchapter B:

§800.57. Employment Services

Section 800.57 is amended to better align Employment Services allocations with the flexibility TWC is granted by both federal and state laws, including Texas Labor Code, §302.062.

§800.58. Child Care

Section 800.58 is amended to refine the rule and require that the child care allocation must be sufficient to ensure that children eligible for the first priority group described in 40 TAC §809.43 are assured child care services. This section is also amended to align with Texas Government Code, §2308.317, regarding the minimum 2 percent of each Board child care allocation that must be used for quality child care initiatives.

§800.68. Adult Education and Literacy

Section 800.68 is amended to require grant funds be awarded to entities with demonstrated effectiveness through a competitive procurement process. This section is also amended to align with Texas Labor Code, §315.002(b-1), which states that the Commission will establish performance requirements that grant recipients must satisfy to qualify for a continuing award of funds based on achievement of enrollment targets and performance benchmarks as well as prioritizing funds to grant recipients who consistently satisfy those enrollment targets and performance benchmarks. Separately, Texas Labor Code, §315.007, requires that the Commission also establish criteria that support additional performance incentive funding for grant recipients who meet specific criteria annually.

§800.69. Integrated English Literacy and Civics Education Program

Section 800.69 is repealed because Adult Education and Literacy Integrated English Literacy and Civics Education grants are awarded based on procurement only, and no factor data allocations are performed. Grantees continue to be awarded the same proportional allocation each year of the contract grant based on available funds per Workforce Innovation and Opportunity Act, Section 243.

SUBCHAPTER F. INTERAGENCY MATTERS

TWC proposes the following amendments to Subchapter F:

§800.201. Title and Purpose

Section 800.201 is amended to more accurately describe the subchapter's purpose.

§800.202. Memorandum of Understanding with Texas Commission for the Deaf and Hard of Hearing

Section 800.202 is repealed because it is no longer statutorily required and, therefore, unnecessary. Texas Human Resources Code, §81.017(a), requires TWC and other state agencies to adopt an MOU to coordinate the delivery of services to people who are deaf or hard of hearing and reduce duplication of services. While the original statute, enacted by House Bill (HB) 550, 70th Texas Legislature, 1987, required the agencies to adopt the MOU by rule, HB 1401, 76th Texas Legislature, Regular Session, 1999, removed that requirement.

§800.203. Memorandum of Understanding with Texas Education Agency

Section 800.203 is repealed because it is outdated and no longer statutorily required. HB 2823, 78th Texas Legislature, Regular Session, 2003, amended Texas Education Code, §29.011(a), to remove the requirement for an interagency MOU concerning transition planning for students enrolled in special education. Furthermore, the rule's reference to 19 TAC §89.1110 is obsolete, as that section has been repealed by the Texas Education Agency.

§800.204. Memorandum of Understanding with Texas Department of Economic Development

Section 800.204 is repealed because it is outdated and no longer statutorily required.

Senate Bill 275 (SB 275), 78th Texas Legislature, Regular Session, 2003, repealed Texas Government Code, §481.028, which had directed the Texas Department of Economic Development (TDED) to enter into memoranda of understanding with TWC.

SB 275 also abolished TDED and transferred its powers to the Office of the Governor (OOG).

Subsequently, OOG repealed its corresponding administrative rule, 10 TAC §195.2 (Memorandum of Understanding with the Texas Workforce Commission).

§800.205. Memoranda of Understanding with a Governmental Entity Pursuant to Texas Government Code §497.0596(a)(4)

Section 800.205 is amended to update the mailing address for requesting a copy of an MOU, make minor style and clarifying changes to the rule language, and replace "Memoranda" with "Memorandum" in the section title.

SUBCHAPTER G. PETITION FOR ADOPTION OF RULES

TWC proposes the following amendments to Subchapter G:

§800.251. Title and Purpose

Section 800.251 is renamed "Purpose" and amended to more accurately describe the subchapter's purpose.

§800.252. Definitions

Section 800.252 is amended to define "petition" and remove the definition for "Commission," because it is defined in §800.2(7).

§800.253. Submission and Petition Requirements

Section 800.253 is amended to clarify the minimum required contents of a petition.

§800.254. Review of Petition

Section 800.254 is amended to clarify that "days" means calendar days.

§800.255. Commission Decision and Action

Section 800.255 is amended to clarify when the Commission shall issue its final decision in response to a petition.

SUBCHAPTER H. VENDOR PROTESTS

TWC proposes the following amendments to Subchapter H:

§800.301. Vendor Protest Procedures

Section 800.301 is amended to add a designated email address as an acceptable way for a vendor to submit a formal protest to TWC.

SUBCHAPTER I. ENHANCED CONTRACT MONITORING

TWC proposes the following amendments to Subchapter I:

§800.350. Purpose and Scope

Section 800.350 is amended to add two more specific types of state agency contracts exempt from the enhanced monitoring provisions under Texas Government Code, §2261.253(c).

§800.351. Enhanced Contract Monitoring Policy

Section 800.351 is amended to change the name of the Regulatory Integrity Division to "Fraud Deterrence and Compliance Monitoring."

§800.352. Reporting of Enhanced Contract Monitoring

Section 800.352 is renamed "Reporting on Enhanced Contract Monitoring."

Section 800.352 is amended to refine TWC's enhanced contract monitoring reporting process, including the reporting of any contract with a total contract value exceeding $1 million, as required under Texas Government Code, §2261.254.

SUBCHAPTER L. WORKFORCE DIPLOMA PILOT PROGRAM

TWC proposes the following amendments to Subchapter L:

§800.502. Request for Qualifications and List of Qualified Providers

Section 800.502 is amended to add new §800.502(d) to specify that an approved provider does not need to reapply to participate in the Workforce Diploma Pilot program unless the provider has been removed from the list for not meeting the minimum performance standards for two consecutive calendar years.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the proposed rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the proposed rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the proposed rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the proposed rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the proposed rules.

There are no anticipated economic costs to individuals required to comply with the proposed rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the proposed rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking, as discussed elsewhere in this preamble, is to amend rules that were identified as requiring revision during the review of Chapter 800.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the proposed rules are in effect, the rules:

--will not create or eliminate a government program;

--will not require the creation or elimination of employee positions;

--will not require an increase or decrease in future legislative appropriations to TWC;

--will not require an increase or decrease in fees paid to TWC;

--will not create a new regulation;

--will not expand, limit, or eliminate an existing regulation;

--will not change the number of individuals subject to the rules; and

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the proposed rules.

Les Trobman, General Counsel, has determined that the anticipated public benefit of the proposed rules will be updated rules that align with current statutory requirements and TWC practices and removal of obsolete rules from the Texas Administrative Code.

PART IV. REQUEST FOR IMPACT INFORMATION

TWC requests, from any person required to comply with the proposed rules or any other interested person, information related to the cost, benefit, or effect of the proposed rules, including any applicable data, research, or analysis. Please submit the requested information to TWCPolicyComments@twc.texas.gov no later than September 7, 2026.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than September 7, 2026.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §800.2

PART VI. STATUTORY AUTHORITY

The rule is proposed under the following statutory authority:

Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules necessary for the effective administration of TWC services and activities.

The proposed rule relates to Texas Labor Code, Chapter 301.

§800.2. Definitions.

The following words and terms, when used in this part, relating to the Texas Workforce Commission, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Adult Education and Literacy (AEL)--Academic instruction and education services below the postsecondary level that increase an individual's ability to:

(A) read, write, and speak in English and perform mathematics or other activities necessary for the attainment of a secondary school diploma or its recognized equivalent;

(B) participate in job training and retraining programs or transition to postsecondary education and training; and

(C) obtain and retain employment.

(2) Agency--The unit of state government established under Texas Labor Code, Chapter 301, that is presided over by the Commission and administered by the executive director to operate the integrated workforce development system and administer the unemployment compensation insurance program in this state as established under the Texas Unemployment Compensation Act, Texas Labor Code, Title 4, Subtitle A, as amended. The definition of "Agency" shall apply to all uses of the term in rules contained in this part, unless otherwise defined, relating to the Texas Workforce Commission.

(3) Allocation--The amount approved by the Commission for expenditures to a local workforce development area during a specified program year, according to specific state and federal requirements.

(4) Board--A Local Workforce Development Board created pursuant to Texas Government Code, §2308.253, and certified by the governor pursuant to Texas Government Code, §2308.261. This includes such a Board when functioning as the Local Workforce Investment Board as described in the Workforce Innovation and Opportunity Act (WIOA) §107 (29 USC §3122), including those functions required of a youth standing committee, as provided for under WIOA §107(i). The definition of Board shall apply to all uses of the term in the rules contained in this part, or unless otherwise defined, relating to the Texas Workforce Commission. Boards are subrecipients as defined in the Uniform Guidance under 2 Code of Federal Regulations (CFR) Part 200 [~~OMB Circular A-133~~].

(5) Child Care--Child care services funded through the Commission, which may include services funded under the Child Care and Development Fund, WIOA, and other funds available to the Commission or a Board to provide quality child care to assist families seeking to become independent from, or who are at risk of becoming dependent on, public assistance while parents are either working or participating in educational or training activities in accordance with state and federal statutes and regulations.

(6) Choices--The employment and training activities created under Texas Human Resources Code, §31.0126, [~~of the Texas Human Resources Code~~] and funded under Temporary Assistance for Needy Families (TANF) (42 USC 601 et seq. [~~et.seq.~~]) to assist individuals who are receiving temporary cash assistance, transitioning off, or at risk of becoming dependent on temporary cash assistance or other public assistance in obtaining and retaining employment.

(7) Commission--The body of governance of the Texas Workforce Commission composed of three members appointed by the governor as established under Texas Labor Code, §301.002, that includes one representative of labor, one representative of employers, and one representative of the public. The definition of Commission shall apply to all uses of the term in rules contained in this part, unless otherwise defined, relating to the Texas Workforce Commission.

(8) Formal Measures--Workforce development services performance measures adopted by the governor and developed and recommended through the Texas Workforce Investment Council [~~(TWIC)~~].

(9) Employment Service--A program to match qualified job seekers with employers through a statewide network of one-stop career centers. (Wagner-Peyser Act of 1933 (Title 29 USC, Chapter 4B) as amended by WIOA (PL 113-128)).

(10) Executive Director--The individual appointed by the Commission to administer the daily operations of the Agency, which may include an individual delegated by the Executive Director to perform a specific function on behalf of the Executive Director.

(11) Historically Underutilized Business (HUB)--A business entity as defined in 34 Texas Administrative Code (TAC) §20.282 that is certified by the State of Texas, has not exceeded the standards for size established by 34 TAC §20.294, and has established Texas as its principal place of business.

(12) Local Workforce Development Area (workforce area)--Workforce areas designated by the governor pursuant to Texas Government Code, §2308.252, and functioning as a Local Workforce Investment Area, as provided for under WIOA §106 and §189(i)(1) (29 USC §3121 and §3249).

(13) One-Stop Service Delivery Network--A one-stop--based network under which entities responsible for administering separate workforce investment, educational, and other human resources programs and funding streams collaborate to create a seamless network of service delivery that shall enhance the availability of services through the use of all available access and coordination methods, including telephonic and electronic methods--also known as Texas Workforce Solutions.

(14) Performance Measure--An expected performance outcome or result.

(15) Performance Target--A contracted numerical value setting the acceptable and expected performance outcome or result to be achieved for a performance measure, including Core Outcome Formal Measures. Achievement between 95 and 105 percent of the established target is considered meeting the target.

(16) Program Year--The twelve-month period applicable to the following as specified:

(A) Child Care: October 1 - September 30;

(B) Choices: October 1 - September 30;

(C) Employment Service: October 1 - September 30;

(D) Supplemental Nutrition Assistance Program Employment and Training: October 1 - September 30;

(E) Workforce Innovation and Opportunity Act (WIOA) Vocational Rehabilitation: October 1 - September 30;

(F) Trade Act services: October 1 - September 30;

(G) WIOA Adult, Dislocated Worker, and Youth formula funds: July 1 - June 30;

(H) WIOA Alternative Funding for Statewide Activities: October 1 - September 30;

(I) WIOA Alternative Funding for One-Stop Enhancements: October 1 - September 30; and

(J) WIOA, Adult Education and Literacy: July 1 - June 30.

(17) Supplemental Nutrition Assistance Program Employment and Training (SNAP E&T)--A program to assist SNAP recipients to become self-supporting through participation in activities that include employment, job readiness, education, and training, activities authorized and engaged in as specified by federal statutes and regula-

tions (7 USC §2011), and Chapter 813 of this title [~~relating to Supplemental Nutrition Assistance Program Employment and Training~~].

(18) TANF--Temporary Assistance for Needy Families, which may include temporary cash assistance and other temporary assistance for eligible individuals, as defined in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended (7 USC §2011 et seq.) and the TANF statutes and regulations (42 USC §601 et seq.[~~)~~], and 45 CFR [~~Code of Federal Regulations (CFR)~~] Parts 260 - 265). TANF may also include the TANF State Program (TANF SP), relating to two-parent families, which is codified in Texas Human Resources Code, Chapter 34.

[~~(19) Trade Act Services--Programs authorized by the Trade Act of 1974, as amended (and 20 CFR Part 617) providing services to dislocated workers eligible for Trade benefits through Workforce Solutions Offices.~~]

(19) [~~(20)~~] Texas Workforce Investment Council (TWIC)--Appointed [~~Texas Workforce Investment Council, appointed~~] by the governor pursuant to Texas Government Code, §2308.052, and functioning as the State Workforce Investment Board, as provided for under WIOA §101(e) (29 USC §3111(e). Additionally [~~In addition~~], pursuant to WIOA §193(a)(5) (29 USC §3253(a)(5)), TWIC maintains the duties, responsibilities, powers, and limitations as provided in Texas Government Code, §§2308.101 - 2308.105.

(20) Trade Act Services--Programs authorized by the Trade Act of 1974, as amended (and 20 CFR Part 617) providing services to dislocated workers eligible for Trade benefits through Workforce Solutions Offices.

(21) WIOA--Workforce Innovation and Opportunity Act--(PL 113 - 128, 29 USC §3101 et seq.). References to WIOA include references to WIOA formula-allocated funds unless specifically stated otherwise.

(22) WIOA Formula-Allocated Funds--Funds allocated by formula to workforce areas for each of the following separate categories of services: WIOA adult, dislocated worker, and youth (excluding the secretary's and governor's reserve funds and rapid response funds).

(23) Workforce Solutions Offices Partner--An entity that carries out a workforce investment, educational, or other human resources program or activity, and that participates in the operation of the One-Stop Service Delivery Network in a workforce area consistent with the terms of a memorandum of understanding entered into between the entity and the Board.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Les Trobman
General Counsel
Texas Workforce Commission
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SUBCHAPTER B. ALLOCATIONS

40 TAC §§800.57, 800.58, 800.68

The rules are proposed under the following statutory authority:

--Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules necessary for the effective administration of TWC services and activities.

--Texas Labor Code, §302.002(d), which requires TWC to adopt rules as necessary for the administration of workforce programs.

--Texas Labor Code, §315.002(d), which allows TWC to adopt rules for the administration of adult education and literacy (AEL) programs.

--Texas Labor Code, §315.007(a), which requires TWC to adopt rules establishing a performance-based process for awarding funds for the provision of AEL services.

The proposed rules relate to Texas Labor Code, Chapters 302 and 315.

§800.57. Employment Services.

(a) Employment Services funds available to the Commission to provide Employment Services under §7(a) of the Wagner-Peyser Act (29 USCA [~~U.S.C.A.~~] Chapter 4B) will be utilized by the Commission as set forth in subsection (b) of this section.

(b) At least 80 percent [~~80%~~] of the Employment Services funds available to local workforce areas under §7(a) of the Wagner-Peyser Act (29 USCA [~~U.S.C.A.~~] Chapter 4B, including §49(c)) will be utilized by the Commission within the workforce areas according to the established federal formula, as follows:

(1) Two-thirds will be based on the relative proportion of the total civilian labor force residing within the workforce area to the statewide total civilian labor force[~~.~~];

(2) One-third will be based on the relative proportion of the total number of unemployed individuals residing within the workforce area to the statewide total number of unemployed individuals; and

(3) the application of a hold harmless/stop gain procedure.

(c) No more than 10 percent [~~10%~~] of the funds expended as part of a workforce area's allocation shall be used for administrative costs, as defined by appropriate federal regulations and Commission policy.

§800.58. Child Care.

(a) Funds available to the Commission for child care services will be allocated to the workforce areas using need-based formulas, as set forth in this section.

(b) Child Care and Development Fund (CCDF) Mandatory Funds authorized under the Social Security Act, §418(a)(1), as amended, together with state general revenue Maintenance of Effort (MOE) Funds, Social Services Block Grant funds, TANF funds, and other funds designated by the Commission for child care (excluding any amounts withheld for state-level responsibilities) will be allocated on the following basis:

(1) 50 percent will be based on the relative proportion of the total number of children under the age of five years old residing within the workforce area to the statewide total number of children under the age of five years old; [~~,~~] and

(2) 50 percent will be based on the relative proportion of the total number of people residing within the workforce area whose income does not exceed 100 percent of the poverty level to the statewide total number of people whose income does not exceed 100 percent of the poverty level.

(c) CCDF Matching Funds authorized under the Social Security Act, §418(a)(2), as amended, together with state general revenue matching funds and estimated appropriated receipts of donated funds, will be allocated according to the relative proportion of children under the age of 13 years old residing within the workforce area to the statewide total number of children under the age of 13 years old.

(d) CCDF Discretionary Funds authorized under the Child Care and Development Block Grant Act of 1990 §658B, as amended, will be allocated according to the relative proportion of the total number of children under the age of 13 years old in families whose income does not exceed 150 percent of the poverty level residing within the workforce area to the statewide total number of children under the age of 13 years old in families whose income does not exceed 150 percent of the poverty level.

(e) The following provisions apply to the funds allocated in subsections (b) - (d) of this section:

(1) Sufficient funds must be used for direct child care services to ensure Commission-approved performance targets are met.

(2) Sufficient funds must be used to ensure children eligible for the first priority group described in §809.43 of this title are assured child care services.

[~~(2) Children eligible for Transitional and Choices child care shall be served on a priority basis to enable parents to participate in work, education, or training activities.~~]

(3) No more than 5 percent of the total expenditure of funds may be used for administrative expenditures as defined in federal regulations contained in 45 CFR Part 98 [~~C.F.R. §98.52~~], as may be amended unless the total expenditures for a workforce area are less than $5,000,000. If a workforce area has total expenditures of less than $5,000,000, then no more than $250,000 may be used for administrative expenditures.

(4) Pursuant to Texas Government Code, §2308.317, each Board shall use at least 2 percent of the funds allocated under this section for quality child care initiatives.

[~~(4) Each Board shall set the amount of the total expenditure of funds to be used for quality activities consistent with federal and state statutes and regulations.~~]

(5) The Board shall comply with any additional requirements adopted by the Commission or contained in the Board contract.

(6) Allocations of child care funds will include applications of hold harmless/stop gain procedures.

§800.68. Adult Education and Literacy.

(a) AEL funds available to the Commission to provide services under the federal Adult Education and Family Literacy Act (AEFLA), WIOA Title II, together with associated state general revenue matching funds and federal TANF funds--together with any state general revenue funds appropriated as TANF maintenance-of-effort--will be used by the Commission, as set forth in subsections (b) - (e) [~~(b)~~ - ~~(d)~~] of this section. Prior to any grant recipient receiving notice of an award, the Commission shall review and approve the award of grant funds to be issued under this program. The Commission shall give priority in continuing to award [~~awarding~~] funds through contracted grant renewal periods to entities that consistently satisfy annual enrollment targets and performance benchmarks established by the Commission that align to Texas Labor Code, §315.002(b-1) [~~requirements comparable to subsection (e) of this section~~].

(b) At least 82.5 percent of the AEFLA §231 federal funds constituting the total state award of AEFLA state grants--including amounts allotted to the eligible agency having a state plan, as provided by AEFLA §211(c)--will be awarded annually to entities with demonstrated effectiveness as determined through a statewide competitive procurement and [~~allocated by the Commission to the workforce areas. From the amount allotted to the eligible agency having a state plan, as provided by AEFLA §211(c), the Commission will allocate amounts to the workforce areas according to the established federal formula, as follows~~]:

(1) [~~100 percent~~] will be based on:

(A) the relative proportion of individuals residing within each county [~~workforce area~~] who are at least 18 years of age, do not have a secondary school diploma or its recognized equivalent, and are not enrolled in secondary school, during the most recent period for which statistics are available;

(B) an equal base amount; and

(C) the application of a hold-harmless/stop-gain procedure.

(2) No more than 10 percent of the annual renewal shall be determined on the basis of the achievement of performance benchmarks approved by the Commission.

(3) [~~(2)~~] No more than 5 percent of the funds (29 USC 3323(a)(2)) expended as part of this [~~workforce area~~] allocation shall be used for administrative costs, [~~as defined by AEFLA,~~] provided, however, that the Special Rule outlined in AEFLA §233(b) shall apply with effective justification, as appropriate.

[~~(3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (e) of this section.~~]

(c) At least 80 percent of the state general revenue matching funds associated with the allotment of federal funds to the eligible agency having a state plan, as provided by AEFLA §211(c), will be awarded to entities with demonstrated effectiveness as determined through a statewide competitive procurement, and [~~allocated by the Commission to the workforce areas according to the established federal formula, as follows~~]:

(1) [~~100 percent~~] will be based on:

(A) the relative proportion of individuals residing within each county [~~workforce area~~] who are at least 18 years of age, do not have a secondary school diploma or its recognized equivalent, and are not enrolled in secondary school, during the most recent period for which statistics are available;

(B) an equal base amount; and

(C) the application of a hold-harmless/stop-gain procedure.

(2) No more than 10 percent of the annual renewal shall be determined on the basis of the achievement of performance benchmarks approved by the Commission.

(3) [~~(2)~~] No more than 15 percent of the funds expended as part of this [~~workforce area~~] allocation shall be used for administrative costs, as defined by Commission policy.

[~~(3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (e) of this section.~~]

(d) At least 80 percent of federal TANF funds associated with the AEL program--together with any state general revenue funds appropriated as TANF maintenance-of-effort--will be awarded to entities with demonstrated effectiveness as determined through a statewide competitive procurement [~~allocated by the Commission to the workforce areas according to a need-based formula~~], as follows:

(1) 100 percent will be based on:

(A) the relative proportion of the unduplicated number of TANF adult recipients with educational attainment of less than a secondary diploma during the most recently completed calendar year;

(B) an equal base amount; and

(C) the application of a hold-harmless/stop-gain procedure.

(2) No more than 10 percent of the annual renewal shall be determined on the basis of the achievement of performance benchmarks approved by the Commission.

(3) [~~(2)~~] No more than 15 percent of the funds (45 CFR §263.13) expended as part of this [~~workforce area~~] allocation shall be used for administrative costs[~~, as defined by federal regulations and Commission policy~~].

[~~(3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (e) of this section.~~]

[~~(e) AEL performance accountability benchmarks shall be established to coincide with performance measures and reports, or other periods, as determined by the Commission. Levels of performance shall, at a minimum, be expressed in an objective, quantifiable, and measurable form, and show continuous improvement.~~]

(e) [~~(f)~~] Texas Labor Code, §315.007(c), requires that performance incentive funding criteria shall include measures that require [~~Performance accountability benchmarks shall~~]:

[~~(1) include measures for high school equivalency program or ability-to-benefit program enrollment and achievement, as outlined in paragraph (2) of this subsection. A postsecondary ability-to-benefit program, as outlined in paragraphs (2) and (3) of this subsection, is a postsecondary education or training program that:~~]

[~~(A) results in a recognized postsecondary credential; and~~]

[~~(B) enrolls AEL eligible participants who:~~]

[~~*(i)* do not have a high school diploma or recognized equivalency;~~]

[~~*(ii)* qualify for federal student financial aid eligibility under the federal Ability-to-Benefit provisions enacted in §484(d) of the Higher Education Act of 1965; and~~]

[~~*(iii)* demonstrate on an assessment instrument that the participant can pass college-level courses with some support;~~]

[~~(2) include measures that require:~~]

(1) [~~(A)~~] at least 25 percent of all participants served in the program year to be enrolled in a high school equivalency or postsecondary ability-to-benefit program; [~~and~~]

(2) [~~(B)~~] at least 70 percent of participants who were in a high school equivalency or postsecondary ability-to-benefit program during the program year and exited during the program year to achieve either a high school equivalency or a recognized postsecondary credential; and

(3) performance incentive funding amounts to be approved by the Commission each program year contingent upon the availability of funds. Only grant recipients who have successfully satisfied the criteria established in paragraphs (1) and (2) of this subsection will be awarded additional funding as approved by the Commission [~~for milestones toward meeting high school equivalency program or postsecondary ability-to-benefit program enrollment and achievement as outlined in paragraph (2) of this subsection~~].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Les Trobman
General Counsel
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40 TAC §800.69

The repeal is proposed under the following statutory authority:

--Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules necessary for the effective administration of TWC services and activities.

--Texas Labor Code, §302.002(d), which requires TWC to adopt rules as necessary for the administration of workforce programs.

--Texas Labor Code, §315.002(d), which allows TWC to adopt rules for the administration of adult education and literacy (AEL) programs.

--Texas Labor Code, §315.007(a), which requires TWC to adopt rules establishing a performance-based process for awarding funds for the provision of AEL services.

The proposed repeal relates to Texas Labor Code, Chapters 302 and 315.

§800.69. Integrated English Literacy and Civics Education Program.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER F. INTERAGENCY MATTERS

40 TAC §800.201, §800.205

The rules are proposed under the following statutory authority:

Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules necessary for the effective administration of TWC services and activities.

The proposed rules relate to Texas Labor Code, Chapter 301.

§800.201. [~~Title and~~] Purpose.

The purpose of these rules is to provide notice to the public of any memorandum of understanding, contract, or other agreement between the Texas Workforce Commission and another Texas state agency that is adopted by rule as required by law or determined necessary by the Commission.

[~~(a) These rules may be cited as Interagency Matters.~~]

[~~(b) The purpose of these rules is to implement and interpret the provisions of the Texas Administrative Code, Chapter 40, Interagency Matters, and to provide notice to the public of the contents of the Memorandums of Understanding.~~]

§800.205. Memorandum [~~Memoranda~~] of Understanding with a Governmental Entity Pursuant to Texas Government Code §497.0596(a)(4).

(a) The Texas Workforce Commission [~~hereby~~] adopts by reference the terms of any memorandum of understanding (MOU) relating to identifying potentially affected employers under a proposed private sector prison industries program and providing such information to the appropriate governmental entity to meet its notification requirements. Information provided to a governmental entity shall comply with the requirements of Texas Labor Code §301.085 and 40 TAC, Chapter 815, Subchapter E, of this title.

(b) Any MOU [~~memorandum of understanding~~] under subsection (a) of this section shall stipulate that:

(1) only publicly available data sources shall be used;

(2) costs incurred for producing the data shall be reimbursed to the Agency; and

(3) the information provided by the Agency is solely for the limited purpose of allowing the governmental entity to meet its notice requirements under Texas Government Code, §497.0596, and is separate and apart from any certification described in Texas Government Code, §497.059.

(c) Copies of any MOU established under the terms of this section [~~the memoranda of understanding~~] are available at the Texas Workforce Commission, Office of General Counsel, 101 East 15th Street, [~~Room 614,~~] Austin, Texas 78778.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Les Trobman
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40 TAC §§800.202 - 800.204

The repeals are proposed under the following statutory authority:

Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules necessary for the effective administration of TWC services and activities.

The proposed repeals relate to Texas Labor Code, Chapter 301.

§800.202. Memorandum of Understanding with Texas Commission for the Deaf and Hard of Hearing.

§800.203. Memorandum of Understanding with Texas Education Agency.

§800.204. Memorandum of Understanding with Texas Department of Economic Development.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER G. PETITION FOR ADOPTION OF RULES

40 TAC §§800.251 - 800.255

The rules are proposed under the following statutory authority:

--Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules necessary for the effective administration of TWC services and activities.

--Texas Government Code, §2001.021, which requires state agencies to adopt rules establishing procedures for a petition for rulemaking.

The proposed rules relate to Texas Government Code, Chapter 2001.

§800.251. [~~Title and~~] Purpose.

The purpose of this subchapter is to describe the Agency's process for addressing a petition for the adoption of a rule. This subchapter is required by Texas Government Code, §2001.021.

[~~(a) Title. These rules may be cited as the Petition for the Adoption of Rules.~~]

[~~(b) Purpose. The purpose of these rules is to implement the provisions of Texas Government Code, §2001.21 regarding agency procedure for addressing petitions for the adoption of rules.~~]

§800.252. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

[~~(1) Commission--The Texas Workforce Commission~~]

(1) [~~(2)~~] Interested person--An interested person is defined as:

(A) a resident of this state;

(B) a business entity located in this state;

(C) a governmental subdivision located in this state; or

(D) a public or private organization located in this state that is not a state agency.

(2) Petition--A petition for rulemaking is a request from an interested person to a state agency to create, amend, or repeal a rule.

§800.253. Submission and Petition Requirements.

Any interested person may petition the [~~Texas Workforce Commission~~ ~~(~~]Commission[~~)~~] for [~~requesting~~] the adoption of a rule. Petitioners must [~~should~~] submit petitions in writing to the Office of General Counsel [~~General Counsel of the Commission~~]. The petition may be in any legible form and [~~but~~] must contain at least the following information: [~~.~~]

(1) [~~Petitioner's Name and Address.~~] The petitioner's first and last [~~petitioners'~~] name and [~~,~~] complete mailing address; [~~, and signature should appear in the request.~~]

(2) An explanation of and justification for the proposed rule, including [~~Explanation and Justification. A petitioner should include an explanation and justification of the proposed rule. The explanation should include~~] a concise statement of the relevant background information necessary to understand the need for the proposed rule, the existing problem that the proposed rule is intended to correct, and the foreseeable effects of the requested rule change; [~~.~~]

(3) The full [~~Text. A petitioner should include the~~] text of the proposed rule, including, if applicable, all changes to any existing rule and a [~~reflecting added or deleted words. A~~] reference to the [~~any~~] existing rule including its [~~the~~] title, chapter, and section number; and [~~, if applicable, should appear on the request.~~]

(4) [~~Authority.~~] A statement of the statutory or other authority for making the proposed rule [~~taking the requested action should also appear on the request~~].

§800.254. Review of Petition.

Upon receipt of a [~~substantially complete~~] petition, as described in §800.253 of this subchapter, the general counsel will forward a copy of the petition to the appropriate division director for a response.

(1) Division Response. Within 20 calendar days of [~~after~~] receiving the petition from the general counsel, the division director shall respond in writing to the general counsel [~~General Counsel~~] recommending either denying the request or initiating the rulemaking process. The division director's response shall contain the reasons for the recommendation.

(2) General Counsel Recommendation. Within 20 calendar days of [~~after~~] receiving the division director's response, the general counsel shall submit to the Commission [~~commissioners~~] the petition, the division director's response, and a written recommendation by the general counsel specifying the reasons for the recommendation.

§800.255. Commission Decision and Action.

(a) Not later than the 60th day after receipt of a petition, the Commission [~~The Commissioners~~] shall issue the final decision [~~regarding the petition within 60 days after receipt of the petition from the petitioner~~] to either:

(1) deny the petition in writing, stating the reasons for the denial; or

(2) initiate rulemaking proceedings in accordance with Texas Government Code, Chapter 2001, [~~Administrative Procedure,~~] Subchapter B, Rulemaking[~~, as it may be amended~~].

(b) The Commission may modify any proposed rule to ensure that it conforms to the format of Commission [~~commission~~] rules, adequately addresses the perceived problem, and conforms to the filing requirements of the Texas Register.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Les Trobman
General Counsel
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SUBCHAPTER H. VENDOR PROTESTS

40 TAC §800.301

The rule is proposed under the following statutory authority:

--Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules necessary for the effective administration of TWC services and activities.

--Texas Government Code, §2155.076, which requires state agencies to adopt rules for resolving vendor protests relating to purchasing issues.

The proposed rule relates to Texas Government Code, Chapter 2155.

§800.301. Vendor Protest Procedures.

(a) Any Respondent who is allegedly aggrieved in connection with the Solicitation, evaluation, or award of a contract by the Agency may formally protest to the Agency's director of business operations.

(1) Such protests must be made in writing and timely received by the Agency's director of business operations.

(2) The protest must be received by the Agency's director of business operations within 10 working days after the Protestant knows, or should have known, of the occurrence of the action that is protested.

(3) The Protestant shall email the protest to twcvendor@twc.texas.gov or mail or deliver copies of the protest to: Director of Business Operations, 101 E. 15th Street, Room 316T, Austin, Texas 78778. The Protestant must also mail or deliver copies of the protest to Interested Parties known to the Protestant.

(b) A protest that is not filed timely shall not be considered unless the director of business operations determines that the protest raises issues that are significant to the Agency's procurement practices or procedures.

(c) The protest must be in writing and contain:

(1) the identifying name and number of the Solicitation being protested;

(2) identification of the specific statute or regulation that the Protestant alleges has been violated;

(3) a specific description of each act or omission alleged to have violated the statutory or regulatory provision identified above in paragraph (2) of this section;

(4) a precise statement of the relevant facts including:

(A) sufficient documentation to establish that the protest has been timely filed; and

(B) a description of the resulting adverse impact to the Protestant;

(5) a statement of the argument and authorities that the Protestant offers in support of the protest;

(6) an explanation of the action the Protestant is requesting from the Agency; and

(7) a statement confirming that copies of the protest have been mailed or delivered to any other Interested Party known to the Protestant.

(d) The protest must be signed by an authorized representative for the Protestant and the signature notarized.

(e) The Protestant may appeal determination of a protest to the Agency's deputy executive director.

(1) The appeal filed under these procedures must be in writing, addressed to the Agency's deputy executive director; and

(2) The protest must be received by the deputy executive director no later than 10 business days after the date of receipt of the written determination issued by the director of business operations.

(f) The Agency may move forward with a Solicitation or contract award without delay, in spite of a timely filed protest, to protect the best interests of the Agency or the state.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER I. ENHANCED CONTRACT MONITORING

40 TAC §§800.350 - 800.352

The rules are proposed under the following statutory authority:

--Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules necessary for the effective administration of TWC services and activities.

--Texas Government Code, §2261.253(c), which requires state agencies to adopt rules establishing a procedure to identify each contract that requires enhanced contract or performance monitoring.

The proposed rules relate to Texas Government Code, Chapter 2261.

§800.350. Purpose and Scope.

(a) Purpose. The purpose of this subchapter is to implement the requirements of Texas Government Code, §2261.253(c), requiring state agencies to establish, by rule, a procedure to identify each contract that requires enhanced contract or performance monitoring.

(b) Scope. Pursuant to Texas Government Code, §2261.253(d) and (g), this subchapter does not apply to:

(1) memoranda of understanding;

(2) interagency contracts;

(3) interlocal agreements; [~~or~~]

(4) contracts for which there is not a cost; [~~.~~]

(5) contracts posted on the major contracts database established under Texas Government Code, §322.020; or

(6) a contract of an institution of higher education that is valued at less than $15,000 and paid with money other than funds appropriated to the institution by this state.

§800.351. Enhanced Contract Monitoring Policy.

(a) The Agency shall identify which contracts for goods and services require enhanced monitoring by evaluating the risk factors, which include:

(1) the complexity of the goods and services to be provided;

(2) the contract amount;

(3) the length and scope of the project supported by the contract;

(4) whether the services are new or have changed significantly since the last procurement of the same services;

(5) whether the Agency has experience with the contractor;

(6) whether the project affects external stakeholders or is of particular interest to third parties;

(7) whether Agency data is accessed by the contractor; and

(8) any other factors the Agency determines in a particular circumstance will create a level of risk to the state or Agency such that enhanced monitoring is required.

(b) For contracts requiring enhanced monitoring, the contractor shall report to the assigned Agency contract manager on progress toward goals or performance measure achievements, and the status of deliverables, if any, and on any issues of which the contractor is aware that may create an impediment to meeting the project timeline or goals.

(c) Enhanced monitoring may also include site visits, additional meetings with contractor staff, and inspection of documentation required by the Agency to assess progress toward achievement of performance requirements.

(d) Projects deemed medium or high risk shall be monitored by the assigned contract manager and may involve additional team members such as an assigned project manager and staff from the Office of General Counsel or the Finance, Information Technology, or Fraud Deterrence and Compliance Monitoring divisions [~~Regulatory Integrity Divisions~~], if warranted.

§800.352. Reporting on [~~of~~] Enhanced Contract Monitoring.

(a) Pursuant to [~~the~~] Texas Government Code, §2261.253, the Agency shall submit information on each contract identified for enhanced contract monitoring to the Commission.

(b) The Agency's director of procurement and contract services [~~Procurement and Contract Services~~] (PCS [~~director~~]) shall immediately notify the Commission, executive director, deputy executive director, and the director of business operations of any serious issue or risk that is identified with respect to a contract identified for enhanced contract monitoring.

(c) The contract manager shall report on the status of all contracts subject to enhanced monitoring to the PCS director quarterly.

(d) If any serious issues or risks are identified about a contract subject to enhanced monitoring, the PCS director will immediately notify the director of business operations, [~~and~~] the executive director, and the Commission.

(e) Per Texas Government Code, §2261.254, Agency contracts that meet or exceed a total contract value of $1 million must be reported to the Commission. Contracts under this subsection are not automatically required to be included in enhanced monitoring reporting solely based on dollar value but must be reported on a quarterly basis at a minimum to the PCS director, the director of business operations, the executive director, the deputy executive director, and the Commission. This reporting must include details on the following three criteria:

(1) compliance with financial provisions and delivery schedules under the contract;

(2) corrective action plans required under the contract and the status of any active corrective action plan; and

(3) any liquidated damages assessed or collected under the contract.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Les Trobman
General Counsel
Texas Workforce Commission
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For further information, please call: (737) 301-9662

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SUBCHAPTER L. WORKFORCE DIPLOMA PILOT PROGRAM

40 TAC §800.502

The rule is proposed under the following statutory authority:

--Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules necessary for the effective administration of TWC services and activities.

--Texas Labor Code, §302.002(d)

--Texas Labor Code, §317.008(a), which requires TWC to adopt rules establishing minimum performance standards for providers participating in the Workforce Diploma Pilot Program.

The proposed rule relates to Texas Labor Code, Chapters 302 and 317.

§800.502. Request for Qualifications and List of Qualified Providers.

(a) The Agency will identify qualified providers to participate in the Program through a statewide Request for Qualifications (RFQ) process conducted in accordance with state requirements. The Agency will publish an RFQ no later than October 15th of each year to identify Program providers.

(b) Potential providers will apply directly to the Agency using the RFQ process, and, once identified as a qualified provider, must meet all deadlines, requirements, and guidelines set forth in the published RFQ.

(c) The Agency will publish a list of qualified providers no later than November 15th of each year to participate in the Program the next calendar year.

(d) An approved provider maintains approval to participate in the program during a subsequent calendar year without reapplying to the Agency unless the provider is removed from the approved provider list as provided by Texas Labor Code, §317.008.

(e) [~~(d)~~] Each provider on the qualified provider list will be eligible to receive monthly reimbursements for this Program based on monthly invoices submitted to the Agency, as prescribed in the RFQ's terms.

(f) [~~(e)~~] Each year, the Agency shall review and update the list of qualified providers. Qualified providers that do not meet the minimum performance standards outlined in §800.503 of this subchapter will be placed on probation for the remainder of the calendar year. Failure to meet both minimum performance standards for two consecutive years will result in disqualification from the Program.

(g) [~~(f)~~] The Agency's determinations in the RFQ process will be based on the affirmation of the qualified provider to effectively perform all services and activities outlined in Texas Labor Code, Chapter 317.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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CHAPTER 815. UNEMPLOYMENT INSURANCE

Texas Workforce Commission (TWC) proposes amendments to the following sections of Chapter 815, relating to Unemployment Insurance:

Subchapter A. General Provisions, §815.1 and §815.3

Subchapter B. Benefits, Claims and Appeals, §815.21 and §815.25

Subchapter C. Tax Provisions, §815.113 and §815.115

Subchapter E. Confidentiality and Disclosure of State Unemployment Compensation Information, §815.165

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 815 rulemaking is to implement clarifying changes to definitions and terminology, specify requirements for address notifications and the delivery of TWC notices, establish consistent procedures for Commission hearings, provide clearer guidelines for approved training, and update references to federal law and regulation.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

TWC proposes the following amendments to Subchapter A:

§815.1. Definitions

Section 815.1 is amended to relocate the definition of "agent state" from §815.21 to this section, so that it is with the other definitions that apply to more than one section. The definition of "Board" is amended to assign it the same meaning as defined in §800.2 of this title. A definition for "mailing date" is added pertaining to correspondence sent by TWC.

§815.3. Addresses

Section 815.3 is amended to further specify which individuals under employment must promptly notify TWC of any change of address and to detail which recorded claimant or employer address should be used when delivering a notice of initial claim versus other TWC notices.

SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS

TWC proposes the following amendments to Subchapter B:

§815.21. Interstate Claims

Section 815.21 is amended to remove the definition of "agent state" and relocate it under §815.1 with the other definitions for Chapter 815.

§815.25. Approval of Training

Section 815.25 is amended to update terminology and clarify which types of training shall be considered approved by TWC.

SUBCHAPTER C. TAX PROVISIONS

TWC proposes the following amendments to Subchapter C:

§815.113. Commission Hearings Involving Coverage and Contributions or Reimbursements

Section 815.113 is amended to establish consistent procedures, including: a reopening process for employers that miss a hearing, clearer guidelines for granting in-person hearings, criteria for granting a motion for reconsideration without further hearing, provisions for a rehearing while affirming a prior decision, and a distinction between motions for reconsideration and rehearing.

§815.115. Contribution and Wage Reports Covering Seamen and Seamen's Wages Paid under Shipping Articles

Section 815.115 is amended to update a reference to federal law.

SUBCHAPTER E. CONFIDENTIALITY AND DISCLOSURE OF STATE UNEMPLOYMENT COMPENSATION INFORMATION

TWC proposes the following amendments to Subchapter E:

§815.165. Exceptions to Confidentiality Requirements

Section 815.165 is amended to update a reference to federal regulation.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the proposed rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the proposed rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the proposed rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the proposed rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the proposed rules.

There are no anticipated economic costs to individuals required to comply with the proposed rules.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the proposed rules.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking, as discussed elsewhere in this preamble, is to clarify definitions and terminology, specify requirements for address notifications and the delivery of TWC notices, establish consistent procedures for Commission hearings, provide clearer guidelines for approved training, and update references to federal law and regulation.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the proposed rules will be in effect, they:

--will not create or eliminate a government program;

--will not require the creation or elimination of employee positions;

--will not require an increase or decrease in future legislative appropriations to TWC;

--will not require an increase or decrease in fees paid to TWC;

--will not create a new regulation;

--will not expand, limit, or eliminate an existing regulation;

--will not change the number of individuals subject to the rules; and

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rules will not have an adverse economic impact on small businesses or rural communities, as the proposed rules place no requirements on small businesses or rural communities.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the proposed rules.

Lowell Keig, Director, Unemployment Insurance Division, has determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to provide clarity and improve understanding for those who must comply with the rules.

PART IV. REQUEST FOR IMPACT INFORMATION

TWC requests, from any person required to comply with the proposed rule or any other interested person, information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis. Please submit the requested information to TWCPolicyComments@twc.texas.gov no later than September 7, 2026.

PART V. PUBLIC COMMENTS

Comments on the proposed rules may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than September 7, 2026.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §815.1, §815.3

PART VI. STATUTORY AUTHORITY

The rules are proposed under Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Texas Labor Code, Title 4, Subtitle A, The Texas Unemployment Compensation Act.

§815.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the statute or context in which the word or phrase is used clearly indicates otherwise.

(1) Act--The Texas Unemployment Compensation Act, Texas Labor Code Annotated, Title 4, Subtitle A, as amended.

(2) Additional claim--A notice of new unemployment filed at the beginning of a second or subsequent series of claims within a benefit year or within a period of eligibility when a break of one week or more has occurred in the claim series with intervening employment. The employer named on an additional claim will have 14 days from the date notice of the claim is mailed to reply to the notice. The additional claim reopens a claim series and is not a payable claim since it is not a claim for seven days of compensable unemployment.

(3) Adequate notification--A notification of adverse facts, including any subsequent notification, affecting a claim for benefits, as provided in the Act, Chapter 208.

(A) Notification to the Commission is adequate as long as the employer or its agent gives a reason, supported by facts, directly related to the allegation raised regarding the claimant's right to benefits.

(B) The employer or its agent may demonstrate good cause for failing to provide adequate notice. Good cause is established solely by showing that the employer or its agent was prevented from providing adequate notification due to compelling circumstances beyond the control of the employer or its agent.

(C) Examples of adequate notification of adverse facts include, but are not limited to, the following:

(i) The claimant was discharged for misconduct connected with his work because he was fighting on the job in violation of written company policy.

(ii) The claimant abandoned her job when she failed to contact her supervisor in violation of written company policy and previous warnings.

(D) A notification is not adequate if it provides only a general conclusion without substantiating facts. A general statement that a worker has been discharged for misconduct connected with the work is inadequate. The allegation may be supported by a summary of the events, which may include facts documenting the specific reason for the worker's discharge, such as, but not limited to:

(i) policies or procedures;

(ii) warnings;

(iii) performance reviews;

(iv) attendance records;

(v) complaints; and

(vi) witness statements.

(4) Agency--The unit of state government that is presided over by the Commission and under the direction of the executive director, which operates the integrated workforce development system and administers the unemployment compensation insurance program in this state as established under Texas Labor Code, Chapter 301. It may also be referred to as the Texas Workforce Commission.

(5) Agent state--Any state from which or through which an individual files a claim for benefits from another state.

(6) [~~(5)~~] Appeal--A submission by a party requesting the Agency or the Commission to review a determination or decision that is adverse to that party. The determination or decision must be appealable and pertain to entitlement to unemployment benefits; chargeback as provided in the Act, Chapter 204, Chapter 208, and Chapter 212; fraud as provided in the Act, Chapter 214; tax coverage or contributions or reimbursements. This definition does not grant rights to a party.

(7) [~~(6)~~] Base period with respect to an individual--The first four consecutive completed calendar quarters within the last five completed calendar quarters immediately preceding the first day of the individual's benefit year, or any other alternate base period as allowed by the Act.

(8) [~~(7)~~] Benefit period--The period of seven consecutive calendar days, ending at midnight on Saturday, with respect to which entitlement to benefits is claimed, measured, computed, or determined.

(9) [~~(8)~~] Benefit wage credits--Wages used to determine an individual's monetary eligibility for benefits. Benefit wage credits consist of those wages an individual received for employment from an employer during the individual's base period as well as any wages ordered to be paid to an individual by a final Commission order, pursuant to its

authority under Texas Labor Code, Chapter 61. Benefit wage credits awarded by a final Commission order that were due to be paid to the individual by an employer during the individual's base period shall be credited to the quarter in which the wages were originally due to be paid.

(10) [~~(9)~~] Board--A Local Workforce Development Board. In this chapter, "Board" has the same meaning as defined in §800.2 of this title. [~~created pursuant to Texas Government Code §2308.253 and certified by the Governor pursuant to Texas Government Code §2308.261. This includes a Board when functioning as the Local Workforce Investment Board as described in the Workforce Investment Act §117 (29 U.S.C.A. §2832), including those functions required of a Youth Council, as provided for under the Workforce Investment Act §117(i) (also referred to as an LWDB).~~]

(11) [~~(10)~~] Commission--The three-member body of governance composed of Governor-appointed members in which there is one representative of labor, one representative of employers, and one representative of the public as established in Texas Labor Code, §301.002, which includes the three-member governing body acting under the Act, Chapter 212, Subchapter D, and in Agency hearings involving unemployment insurance issues regarding tax coverage, contributions, or reimbursements.

(12) [~~(11)~~] Day--A calendar day.

(13) [~~(12)~~] Landman--An individual who is qualified to do field work in the purchasing of right-of-way and leases of mineral interests, record searches, and related real property title determinations, and who is primarily engaged in performing the field work.

(14) Mailing date (or "date of mailing")--For correspondence sent by the Agency to a party, "mailing date" means the date on which the Agency:

(A) deposits correspondence with the United States Postal Service; or

(B) transmits an electronic correspondence to an electronic mail address designated by the party or an Agency electronic inbox for parties registered to receive electronic correspondence.

(15) [~~(13)~~] Person--May include a corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity.

(16) [~~(14)~~] Places accessible--Locations in which an employer shall provide required notices to an employee as provided in the Act, Chapter 208. Required notices include the following [~~This includes~~]:

(A) notices [~~Notices~~] providing general information about filing a claim for unemployment benefits shall be displayed in a manner reasonably calculated to be encountered by all employees; and

(B) upon [~~Upon~~] separation from employment, an employer shall provide an employee individual notice of general information about filing a claim for unemployment benefits as set out in the printed notice referenced in §208.001(b) of the Act. As the notice is provided directly to the individual, the employer has significant flexibility in how this information may be made known. Such information may be provided:

(i) in a paper format, including by mail or with separation paperwork;

(ii) by email;

(iii) by text; or

(iv) by other means reasonably calculated to ensure the individual receives the required notification.

(17) [~~(15)~~] Reopened claim--The first claim filed following a break in claim series during a benefit year which was caused by other than intervening employment, that is [~~i.e.,~~] illness, disqualification, unavailability, or failure to report for any reason other than job attachment. The reopened claim reopens a claim series and is not a payable claim since it is not a claim for seven days of compensable unemployment.

(18) [~~(16)~~] Week--A period of seven consecutive calendar days ending at midnight on Saturday.

§815.3. Addresses.

(a) In this chapter, the following shall promptly notify the Agency of any change of address and provide the correct address to the Agency:

(1) Each [~~each~~] employing unit, which has or had individuals in "employment," as [~~so~~] defined in the Act; and [~~shall notify the Agency of its correct address and of any change in its correct address, and each employing unit shall promptly notify the Agency of any change of address.~~]

(2) Each individual who is a claimant for benefits, who is liable to the Agency for an overpayment pursuant to the Act, Chapter 212 or 214, [~~or~~] who is registered for work at an Agency office[~~,~~] or public employment office, including a Texas Workforce Center, or who otherwise has pending business before the Agency [~~workforce center shall promptly notify the Agency of any change of address~~].

(b) In this chapter, a group account, as referred to in §205.021 of the Act, [~~§205.021,~~] shall be treated as a single employing unit for the purposes of this section and the Agency shall use the address of the group representative as the official address of the group. The group representative shall notify the Agency of the correct address and shall promptly notify the Agency of any change of address.

(c) In all transactions in which notice is required by the Act or this chapter, the Agency shall send the notice to [~~notify~~] the parties to [~~at~~] the last known physical or electronic address as reflected in the Agency records. However, when the Agency delivers [~~mails~~] a notice of an initial claim to the employer via the United States Postal Service, the Agency shall use the physical address of the employer for whom the claimant last worked, or if the employer has more than one branch or division at different locations, the location of the branch or division at [~~for~~] which the claimant last worked, or a mailing address designated by the employer in §208.003 of the Act[~~, §208.003~~].

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER B. BENEFITS, CLAIMS, AND APPEALS

40 TAC §815.21, §815.25

The rules are proposed under Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Texas Labor Code, Title 4, Subtitle A, The Texas Unemployment Compensation Act.

§815.21. Interstate Claims.

This section shall govern the Agency in its administrative cooperation with other states adopting a similar rule or regulation for the payment of benefits to interstate claimants, any provision of any other rule to the contrary notwithstanding.

(1) Definitions. As used in this section, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

[~~(A) Agent state--Any state from which or through which an individual files a claim for benefits from another state.~~]

(A) [~~(B)~~] Benefits--The compensation payable to an individual with respect to the individual's unemployment, under the unemployment insurance law of any state.

(B) [~~(C)~~] Interstate benefit payment plan--The plan approved by the Interstate Conference of Employment Security Agencies under which benefits shall be payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

(C) [~~(D)~~] Interstate claimant--An individual who claims benefits under the unemployment insurance law of one or more liable states through the facilities of an agent state, or directly with the liable state. The term "interstate claimant" shall not include any individual who customarily commutes from a residence in an agent state to work in a liable state unless the Agency finds that this exclusion would create undue hardship on the claimants in specified areas.

(D) [~~(E)~~] Liable state--Any state against which an individual files, through another state, a claim for benefits.

(E) [~~(F)~~] State--Includes the District of Columbia, Puerto Rico, and the Virgin Islands.

(F) [~~(G)~~] Week of unemployment--Includes any week of unemployment as defined in the law of the liable state from which benefits with respect to the week are claimed.

(2) Registration for work.

(A) The agent state shall register for work each claimant who files through the agent state, or upon notification of a claim filed directly with the liable state, as required by the laws [~~law~~], regulations, and procedures of the agent state. The registration shall be accepted as meeting the registration requirements of the liable state.

(B) Each agent state shall duly report[~~,~~] to the liable state in question, each interstate claimant who fails to meet the registration/re-employment assistance reporting requirements of the agent state.

(3) Benefit rights of interstate claimants.

(A) If a claimant files a claim against any state, and it is determined by the state that the claimant has available benefit credits in the state, then claims shall be filed only against the state as long as benefit credits are available in that state. Thereafter, the claimant may file claims against any other state in which there are available benefit credits.

(B) For the purposes of this section, benefit credits shall be deemed to be unavailable whenever benefits have been exhausted, terminated, or postponed for an indefinite period or for the entire period in which benefits would otherwise be payable, or whenever benefits are affected by the applications of a seasonal restriction.

(4) Claims for benefits.

(A) Claims for benefits or waiting-period credit filed by an interstate claimant directly with the liable state shall be filed in accordance with the liable state's procedures. Claims shall be filed in accordance with the type of week in use in the agent state. Any adjustments required to fit the type of week used by the liable state shall be made by the liable state on the basis of consecutive claims filed.

(B) Claims shall be filed in accordance with the agent state's regulations for intrastate claims in the local employment offices, affiliated sites, one-stop centers, or at an itinerant service point or by the United States Postal Service [~~mail~~], common carrier, or by other means, including telephonic or electronic means, as the Agency may approve.

(i) With respect to claims for weeks of unemployment in which an individual was not working for the individual's regular employer, the liable state shall, under circumstances that [~~which~~] it considers good cause, accept a continued claim filed up to one week or one reporting period late. If a claimant files more than one reporting period late, an initial interstate claim shall be used to begin a claim series, and no continued claim for a past period shall be accepted.

(ii) With respect to weeks of unemployment during which an individual is attached to the individual's regular employer, the liable state shall accept any claim that [~~which~~] is filed within the time limit applicable to the claims under the law of the agent state.

(5) Determination of claims.

(A) The agent state shall, in connection with each claim filed by an interstate claimant, ascertain and report to the liable state in question the facts relating to the claimant's availability for work and eligibility for benefits as are readily determinable in and by the agent state.

(B) The agent state's responsibility and authority in connection with the determination of interstate claims shall be limited to investigation and reporting of relevant facts and the reporting of relevant facts pertaining to each claimant's failure to register for work or report for re-employment assistance as required by the agent state. The agent state shall not refuse to take an interstate claim.

(6) Appellate procedure.

(A) The agent state shall afford all reasonable cooperation in the taking of evidence and the holding of hearings in connection with appealed interstate benefit claims.

(B) With respect to the time limits imposed by the law of a liable state other than Texas, upon the filing of an appeal in connection with a disputed claim, whether or not the appeal is timely shall be determined by the liable state by reference to that state's laws [~~law~~], regulations, or policies and practices. In interstate appeals in which Texas is the liable state, whether or not the appeal is timely shall be determined by reference to relevant provisions of the [~~Texas Unemployment Compensation~~] Act and current Agency policies and precedent decisions applicable to intrastate appeals.

(C) The liable state shall conduct hearings in connection with appealed interstate benefit claims. The liable state may contact the agent state for assistance in special circumstances.

(7) Canadian claims. This section shall apply in all its provisions to claims taken in and for Canada.

(8) Notification of interstate claim. The liable state shall notify the agent state of each initial claim, reopened file, claim transferred to interstate status, and each weekly [~~week~~] claim filed from the agent state using uniform procedures and record format pursuant to the Interstate Benefit Payment Plan.

§815.25. Approval of Training.

(a) The Agency shall approve training[~~,~~] if:

(1) there is no longer substantial and recurring demand for the individual's skills, [~~and~~] the lack of employment opportunities in occupations requiring those skills is expected to continue for an extended period of time, and the individual has no other skill for which there is an expectation of reemployment in a reasonable period; and

(2) the training will enhance the individual's ability to secure stable employment and earning potential in an occupation for which there is substantial and recurring demand.

(b) An individual shall be in approved training if the Agency approves the training for the individual and the individual is attending the training as shown by the following:

(1) The individual and/or the training facility agrees to furnish evidence upon the Agency's request [~~request of the Agency~~] that the individual is regularly attending the training course and is satisfactorily performing assignments as a trainee; and

(2) The individual affirms at the time of the claim certification that the individual has attended the training course during the given training week or had good cause for the individual's failure to do so.

(c) Training provided by or [~~The funding source of the training shall not affect the approval of the training except that training~~] under the auspices of the Workforce Innovation and Opportunity Act, TWC's Vocational Rehabilitation Services Program, [~~Workforce Investment Act; the Texas Department of Assistive and Rehabilitative Services; the Texas Department of Aging and Disability Services;~~] federal or state veterans' services programs, or any other program specifically designated by the Agency, shall be considered approved for the purposes of §207.022 of the Act [~~§207.022~~].

(d) The Agency shall not deny approval of training solely because the individual resides outside of the state. Agency staff may rely upon the recommendation of the agent state regarding whether the training is approved.

(e) The Commission shall develop procedural guidelines for use by Agency staff and the Boards that are consistent with the requirements of this section. Procedures may include, but are not limited to:

(1) using a statewide or Board-level demand or targeted occupations list to determine whether there is substantial and recurring demand for an occupation or industry; and

(2) using the Agency's job-matching system to assess the individual's existing skills when determining the individual's likelihood to return to an occupation or industry requiring those skills.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Texas Workforce Commission
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For further information, please call: (737) 301-9662

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SUBCHAPTER C. TAX PROVISIONS

40 TAC §815.113, §815.115

The rules are proposed under Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rules relate to Texas Labor Code, Title 4, Subtitle A, The Texas Unemployment Compensation Act.

§815.113. Commission Hearings Involving Coverage and Contributions or Reimbursements.

(a) In all situations not specifically provided for in the Act or in the rules of the Agency, a hearing may, at the discretion of the Commission, be afforded an employing unit upon its written request, in any case involving tax liability or any question relating to contributions or reimbursements. Hearings under this section shall continue to be termed Rule 13 Hearings. The written request for hearing may be filed by hand delivery, the United States Postal Service [~~mail~~], common carrier, facsimile (fax) transmission, or other method approved by the Agency in writing, at a local tax office or at the Texas Workforce Commission, 101 East 15th Street, Austin, Texas 78778-0001.

(b) The Commission may on its own motion set a hearing to secure the facts to establish the status of any individual or employing unit under any section of the Act.

(c) The Commission may designate a representative to preside over the hearing. Hearings shall be conducted by telephone conference call unless the supervisor of the hearing officers or the supervisor's designee determines that an in-person or video-conference hearing is necessary, most commonly to accommodate a disability [~~hearing is necessary~~]. The hearings will be scheduled at the time and [~~and, if an in-person hearing, held at a~~] place and in the manner designated by the supervisor [~~of the hearings officers~~] or the supervisor's designee in accordance with the applicable provisions [~~paragraphs (1) - (3)~~] of this subsection and [~~the applicable provisions in~~] this chapter.

(1) Written notice of the date and time of the hearings shall be given to the parties, and the location if it is an in-person hearing, at least 10 days before the date of the hearing; but if a setting at an earlier date is requested by an individual or employing unit, the supervisor of the hearings officers or the supervisor's designee may at the supervisor's discretion grant that request[~~,~~] if granting [~~the granting of~~] the request will not prejudice the rights of any other party to the proceedings, including the Agency itself. The notice shall be mailed to the parties at their last-known addresses.

(2) In these proceedings before a hearings officer, all parties shall be given an opportunity for full, fair, and impartial hearing. The hearings shall be conducted in the manner deemed most suitable to ascertain the facts and to determine the rights of the parties. All testimony taken shall be under oath and subject to the right of cross-examination by any adverse party, and it shall be recorded. When necessary, the hearing officer may order the taking of depositions. The submission of written briefs, affidavits, and other written memoranda may be required.

(3) A witness, whose attendance at a hearing is required, may be allowed a fee and mileage on the same basis and to the same extent as is provided for witnesses under §815.18 of this chapter [~~(relating to General Rules for Both Appeal Stages)~~].

(4) If a party, including the Agency, fails to appear for a hearing, the hearing officer may hear and record the evidence of the party present and the witnesses, if any, and the Commission shall proceed to decide the appeal on the basis of the record unless there appears to be a good reason for continuing the hearing. A copy of the decision shall be mailed to the parties of interest with an explanation of the manner and time in which a request for reopening may be submitted.

(5) A party who fails to appear at a hearing may, within 30 days from the date the decision is mailed, petition for a new hearing in the manner set out in subsection (a) of this section. The petition shall identify the party requesting the reopening, the applicable decision of the Commission, the date of the petition, and explain the reason for the failure to appear. The provisions of §815.32 of this chapter shall determine on what date the petition was filed. The petition shall be granted if it appears that the petitioner has shown good cause for the petitioner's failure to appear at the hearing. A petition may be denied on the basis of the petition alone and without holding a hearing.

(6) For purposes of this section, the term "appear" shall mean participation by a party or a party's representative in the proceeding. Actions that may be considered as participation include offering testimony, examining witnesses, or presenting oral arguments. If the hearing is a telephone or video-conference hearing, a party or a party's representative shall appear at a hearing by calling on the date and at the time of the hearing and participating in the hearing proceedings. If the hearing is an in-person hearing, a party or a party's representative shall appear by being at the location of the hearing on the date and at the time scheduled for the hearing and participating in the hearing proceedings. Mere submission of written documents, whether sworn or unsworn, or observation of the proceedings shall not constitute an appearance.

(d) The Commission, following each hearing, shall issue a decision, which shall resolve the questions involving tax liability or any question relating to contributions or reimbursements that [~~which~~] arose at the hearing. Copies of the Commission's written decisions [~~of the Commission~~] shall be provided to [~~furnished~~] the parties to the hearings.

(e) A decision of the Commission shall become final 30 days after the date of mailing unless, within the 30-day period, a party files a petition to reopen the hearing, the proceeding is [~~either~~] reopened by a Commission order, or [~~by~~] a party to the proceeding files [~~filing~~] a written motion for reconsideration in accordance with the provisions of §815.17(f) of this chapter [~~(relating to General Rules for Both Appeal Stages)~~]. A party filing a motion for reconsideration must file the motion in writing at the address stated in the Commission's decision. The Commission may deny the motion without further hearing. If the Commission determines that additional evidence or argument is necessary, then the Commission may order a rehearing and schedule the rehearing in accordance with subsection (c) of this section. [~~The motion for reconsideration is sent to the address listed in the decision.~~] A decision is not binding on a person who was not a party to a proceeding conducted under this section.

§815.115. Contribution and Wage Reports Covering Seamen and Seamen's Wages Paid under Shipping Articles.

This section shall govern contribution and wage reports covering seamen and seamen's wages paid under shipping articles.

(1) Pay period. For the purpose of this section, the term "pay period" established by "shipping articles" means the period of the voyage or engagement of the crew under "articles of agreement" pursuant to 46 USCA §10302 [46 ~~U.S.C.A.~~ ~~§564~~].

(2) Current reports.

(A) Contribution reports and wage reports with respect to wages, including advances, allotments, and payment in kind, such as board and lodging, earned in any pay period established by "shipping articles" shall be submitted as of the calendar quarter in which any of the wages in cash were actually paid or any of the wages in kind were furnished.

(B) Reports on wages falling within the purview of this section need not be filed prior to the time reports regarding wages paid at the termination of the period shall be filed. However, separate reports shall in that event be filed for each calendar quarter involved during which wages in cash were paid and wages in kind were furnished.

(3) Special reports. The employer shall, upon request of the Agency, promptly furnish a statement of the wages of a seaman, whenever the statement is necessary in order to determine a seaman's eligibility for and rate of benefits. The statement shall be prepared and submitted in the manner the Agency may prescribe in each case.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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Les Trobman
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40 TAC §815.107

The Texas Workforce Commission (TWC) proposes amendments to the following section of Chapter 815, relating to Unemployment Insurance:

Subchapter C. Tax Provisions, §815.107

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed amendments to Chapter 815 is to implement provisions of Senate Bill (SB) 1786, House Bill (HB) 2, and HB 120, enacted by the 89th Texas Legislature, Regular Session, 2025, which enhance TWC's ability to collect, analyze, and utilize workforce data.

The statutory changes amended Texas Labor Code, §204.0025 and added Texas Labor Code, §302.0205. Amended Texas Labor Code, §204.0025 directs TWC to work collaboratively with employers to enhance the reporting of employment and earnings data as part of employers' routine wage filings. The amended §204.0025 also specifies that enhanced wage filings must at a minimum include information related to wage, industry, occupational field, full-time and part-time status, county of primary employment, and remote work status.

New Texas Labor Code, §302.0205 requires TWC to produce a biennial Regional Labor Demand Assessment using the best available data to evaluate workforce needs across the state. Additionally, amended Texas Labor Code, §204.0025 permits TWC to collect other important employment information necessary to conduct the biennial Labor Demand Assessment.

The proposed rule amendments modernize workforce data collection by clarifying employer reporting requirements and ensuring TWC has the information necessary to fulfill its statutory responsibilities. Enhanced data collection will enable TWC to produce more accurate and timely labor market information to support economic development, strengthen education and workforce planning, and inform state and local policymaking. Additionally, TWC will leverage this additional data to combat fraud, providing further benefit to employers and taxpayers statewide.

The amendments provide TWC the flexibility to request additional information, as necessary, through existing reporting mechanisms, while minimizing administrative burden on employers by incorporating such requests into established quarterly wage reporting processes. TWC remains committed to engaging employers and stakeholders to support implementation and address any challenges associated with these enhanced reporting requirements.

Coordination Activities

TWC, as directed by Texas Labor Code, §204.0025, actively engaged representatives of employer organizations to ensure the implementation of enhanced wage record reporting is both practical for businesses and effective for data collection. To achieve this engagement, TWC collaborated with national employer groups for this dialogue, including surveying their members on technical feasibility. Additionally, TWC collaborated with industry groups and local chambers of commerce to host stakeholder feedback sessions, ensuring the voices of small and large employers were heard.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rule and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER C. TAX PROVISIONS

TWC proposes the following amendments to Subchapter C:

§815.107. Reports Required and Their Due Dates

Section 815.107(d) is amended to add new paragraphs (5) and (6) to the list of information that employers are directed to provide in their Quarterly Reports from Taxed Employers. New §815.107(d)(6) requires employers to provide any information requested to comply with the Additional Workforce Data Reporting necessary to conduct the Labor Demand Assessment under Texas Labor Code, §302.0205.

Additionally, §815.107 is amended to add new (e), which states that failure to provide the information requested pursuant to Texas Labor Code, §204.0025 may be considered as one of several factors in TWC's risk-based approach to employer compliance reviews.

PART III. IMPACT STATEMENTS

Chris Nelson, Chief Financial Officer, has determined that for each year of the first five years the proposed rule will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the proposed rule.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the proposed rule.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the proposed rule.

There are no significant anticipated economic costs to individuals required to comply with the proposed rule. While there could be minimal initial costs for employers to comply with the proposed rule, primarily associated with incorporating additional data elements into existing reporting processes, these costs are expected to decrease or phase out as employers integrate the requirements into routine quarterly wage reporting.

There is no anticipated adverse economic impact on small businesses, microbusinesses, or rural communities as a result of enforcing or administering the proposed rule.

Based on the analyses required by Texas Government Code, §2001.024, TWC has determined that the requirement to repeal or amend a rule, as required by Texas Government Code, §2001.0045, does not apply to this rulemaking.

Takings Impact Assessment

Under Texas Government Code, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the US Constitution or the Texas Constitution, §17 or §19, Article I, or restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action, and is the producing cause of a reduction of at least 25 percent in the market value of the affected private real property, determined by comparing the market value of the property as if the governmental action is not in effect and the market value of the property determined as if the governmental action is in effect. TWC completed a Takings Impact Assessment for the proposed rulemaking action under Texas Government Code, §2007.043. The primary purpose of this proposed rulemaking is to implement statutory requirements for enhancing the collection of employment and workforce data through employer wage reporting to support workforce, education, and economic planning, and ensure program integrity.

The proposed rulemaking action will not create any additional burden on private real property or affect private real property in a manner that would require compensation to private real property owners under the US Constitution or the Texas Constitution. The proposal also will not affect private real property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Therefore, the proposed rulemaking will not cause a taking under Texas Government Code, Chapter 2007.

Government Growth Impact Statement

TWC has determined that during the first five years the proposed rule will be in effect, it:

--will not create or eliminate a government program;

--will not require the creation or elimination of employee positions;

--will not require an increase or decrease in future legislative appropriations to TWC;

--will not require an increase or decrease in fees paid to TWC;

--will not create a new regulation;

--will not expand, limit, or eliminate an existing regulation;

--will not change the number of individuals subject to the rule; and

--will not positively or adversely affect the state's economy.

Economic Impact Statement and Regulatory Flexibility Analysis

TWC has determined that the proposed rule will not have an adverse economic impact on small businesses or rural communities, as the proposed rule places no requirements on small businesses or rural communities. As noted above in this preamble, while there may be minimal initial costs for employers to comply with the proposed rule, primarily from adding data elements into existing reporting processes, these costs are expected to decrease or phase out as the requirements become part of routine quarterly wage reporting.

Mariana Vega, Director, Labor Market Information, has determined that there is not a significant negative impact upon employment conditions in the state as a result of the proposed rule.

Lowell Keig, Director, Unemployment Insurance Division, has determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated as a result of enforcing the proposed rule will be improved accuracy and completeness of workforce data, thereby enabling more effective economic planning, better alignment of workforce development programs with employer needs, improved educational planning, enhanced transparency in available labor market information, and strengthened fraud detection and prevention efforts.

PART IV. REQUEST FOR IMPACT INFORMATION

TWC requests, from any person required to comply with the proposed rule or any other interested person, information related to the cost, benefit, or effect of the proposed rule, including any applicable data, research, or analysis. Please submit the requested information to TWCPolicyComments@twc.texas.gov no later than September 7, 2026.

PART V. PUBLIC COMMENTS

Comments on the proposed rule may be submitted to TWCPolicyComments@twc.texas.gov and must be received no later than September 7, 2026.

PART VI. STATUTORY AUTHORITY

The rule is proposed under Texas Labor Code, §301.0015 and §302.002(d), which provide TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule relates to Texas Labor Code, Title 4, particularly Chapters 204 and 302.

§815.107. Reports Required and Their Due Dates.

(a) All reports and forms required by the Agency or the Act shall be filed with the Agency in one of the following formats unless a different format is approved in writing by the Agency, a hardship exemption is requested from and granted by the Agency, or as specified in this chapter.

(1) General Format of Reports and Forms and Methods of Submission. The reports and forms referenced in this section shall be filed using:

(A) forms printed by the Agency;

(B) electronic media in a format prescribed by the Agency; or

(C) any other manner approved and prescribed by the Agency in writing.

(2) Content. The reports and forms shall contain all facts and information necessary to a determination of the amounts due by the employing unit. The Agency may require the furnishing of additional information as it deems necessary for the proper administration of the Act.

(3) Electronic Media Reporting.

(A) Required Electronic Media. All employers and their agents shall file employers' reports, including both summary and detail wage information, as described in §207.004 of the Act, on electronic media using a format prescribed by the Agency.

(B) An electronic media transmission of an employer's report may contain information from more than one employer.

(C) An employer's report filed in an approved medium shall contain both a wage credit report and a summary report.

(b) General Deadlines for Filing Reports and Forms.

(1) Unless otherwise provided in this subchapter, any report or form shall be completed and filed with the Agency within 10 calendar days after the requested report or form is:

(A) mailed to the individual or employing unit at the address on record with the Agency; or

(B) personally delivered to the individual or employing unit by an Agency representative.

(2) Failure to receive notice regarding the reports shall not relieve the individual or employing unit of the responsibility of filing the reports by the date the reports are due.

(3) Good Cause for Extending Deadlines. When good cause is shown, the Agency may extend the due date for filing of a report required under this section; however, the extension shall be effective only if authorized in writing by an Agency representative.

(c) Status Reports.

(1) Status Reports in General. Each employing unit shall file with the Agency a status report within 10 calendar days from the date upon which the employing unit becomes subject to the Act.

(2) Status Reports for New Acquisitions. Any employing unit in the state of Texas that acquires another business or substantially all of the assets of another business shall file a new status report with the Agency within 10 calendar days of the date on which the employing unit made the acquisition.

(3) Status Reports for Additional Information. Each employing unit shall file additional status reports at any time upon the request of the Agency.

(4) Evidence in Support of Status Reports. Employing units filing status reports with the Agency shall:

(A) file with the Agency all facts necessary to a determination of the taxable status of the employing unit; and

(B) if requested, file with the Agency evidence to establish the correctness of information contained in the employing unit's status reports.

(d) Quarterly Reports from Taxed Employers. Each taxed employer, other than a domestic employer who has elected to report and pay annually under §201.027(b) of the Act, shall file with the Agency, within the month during which contributions for any period become due, and not later than the date on which contributions are required to be paid to the Agency, an employer's quarterly report showing for the preceding calendar quarter:

(1) the total amount of remuneration paid for employment (or showing that no remuneration was paid during the quarter);

(2) the total amount of wages paid for employment (as defined in the Act, §201.081 and §201.082);

(3) the amount of wages for benefit wage credits (as defined in the Act, §207.004) paid to each individual employee;

(4) the name and Social Security number of each individual to whom the wages were paid; [~~and~~]

(5) information required under §204.0025 of the Act, including at a minimum:

(A) wages;

(B) industry;

(C) occupation field;

(D) full-time or part-time status;

(E) county of primary employment; and

(F) remote work status.

(6) any information requested on the employer's quarterly report required to comply with additional workforce data reporting necessary for the Agency to conduct the assessment required under Texas Labor Code, §302.0205; and

(7) [~~(5)~~] any other information requested on the employer's quarterly report, including all facts and information necessary to make a determination of the amount of contributions due.

(e) Failure to provide information in subsection (d)(5) and (6) of this section shall be an indicator of enhanced risk when considering whether to audit employers that choose not to contribute data requested by the legislature under §204.0025 of the Act, to improve education and workforce decision making and combat fraud.

(f) [~~(e)~~] Quarterly Reports from Reimbursing Employers and Group Representatives of a Group Account. Each reimbursing employer and the group representative of a group account shall file an employer's quarterly report, by the end of the month following each calendar quarter, that furnishes the following information for the preceding calendar quarter, information specified in subsection (d)(1) - (6) [~~paragraphs (1)~~ - (4) ~~of subsection (d)~~] of this section, and any other information necessary to make a determination of the amount of reimbursements due.

(g) [~~(f)~~] Benefits Financed by the Federal Government. Each employer that has employees whose benefits are to be financed by the federal government shall file a separate quarterly report furnishing the names of the employees, their Social Security numbers, and the wages paid to each. The report shall be filed by the end of the month following each calendar quarter.

(h) [~~(g)~~] Annual Reports from Domestic Employers.

(1) Making the Election. An election to report wages paid and pay contributions on an annual basis must be made in a format or on a form authorized by the Agency by the deadline specified in §201.027 of the Act.

(2) Each domestic employer that qualifies under the Act, and who has made an election as referenced in paragraph (1) of this subsection, shall file with the Agency, by January 31 of the year after the wages were paid, in a format consistent with subsection (a) of this section, a domestic employer's annual report showing the following for the preceding calendar year in which wages were paid.

(A) The information specified in subsection (d)(1) - (6) [~~paragraphs (1)~~ - (4) ~~of subsection (d)~~] of this section subtotaled for each quarter; and

(B) Other information called for on the domestic employer's annual report including all facts and information necessary to make a determination of the amount of contributions due.

(3) Penalties and interest incurred under this section shall be the same as applicable to other employer reporting requirements as provided in Chapter 213 of the Act and this subchapter.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

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SUBCHAPTER E. CONFIDENTIALITY AND DISCLOSURE OF STATE UNEMPLOYMENT COMPENSATION INFORMATION

40 TAC §815.165

The rule is proposed under Texas Labor Code, §301.0015(a)(6), which provides TWC with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of TWC services and activities.

The proposed rule relates to Texas Labor Code, Title 4, Subtitle A, The Texas Unemployment Compensation Act.

§815.165. Exceptions to Confidentiality Requirements.

(a) The Agency may disclose public domain information. For purposes of this section, public domain information includes directory information about the organization of the state, the Commission, and appellate authorities, as well as the names and positions of officials and employees; information about the state unemployment compensation law (and applicable federal law), provisions, rules, regulations, and interpretations, including statements of general policy and interpretations of general applicability; and any agreement relating to the administration of the state unemployment compensation law. Commission-designated precedent case digests from which all individually identifiable information has been removed constitute public domain information. Public domain information does not include information historically excepted from disclosure under the Public Information Act, Chapter 552, Texas Government Code, including, but not limited to, attorney/client privileged information; interagency memoranda containing advice, opinion, or recommendation to policy makers or decision makers; or other items historically excepted from disclosure under the Public Information Act.

(b) The Agency may disclose confidential unemployment compensation information about an individual or employer to that individual or employer, respectively, but in no event does this restrict the Agency from withholding information historically excepted from disclosure, including, but not limited to, confidential informant or attorney-client privileged information, or tax audit techniques.

(c) The Agency may disclose confidential unemployment compensation information if the requestor provides a written release signed by the individual or the employer whose records are requested, and if the written release demonstrates informed consent.

(d) The Agency may disclose confidential unemployment compensation information, based on informed consent, to the following:

(1) An agent acting for or in the place of an individual or an employer by the authority of that individual or employer if the agent presents a written release signed by the party to be represented. If a written release is impossible or impracticable to obtain, the Agency may accept other documentation sufficient to establish informed consent.

(2) An elected official performing constituent services provided the official presents reasonable evidence of authorization to obtain the information, such as a letter from the individual or employer requesting the elected official's assistance or a written record of a telephone request from the individual or employer that the individual or employer has authorized such disclosure.

(3) A licensed attorney retained for purposes unrelated to the state's unemployment compensation law; if the attorney provides a written statement declaring that they have [~~he or she has~~] been retained to represent the individual or employer, the requirements of a written release will have been met. An attorney retained for purposes related to the state's unemployment compensation law may assert that they are [~~he or she is~~] representing the individual or employer, and such assertion need not be in writing.

(4) A third party that is not acting as an agent, only if that entity provides the Commission with a copy of an informed consent release consistent with the requirements of §815.166 of this subchapter.

(5) A third party seeking confidential information on an ongoing basis, only if that entity submits an informed consent release consistent with the requirements of §815.166 of this subchapter. This requirement applies even if the third party is an agent seeking information on an ongoing basis.

(e) The Agency may disclose confidential unemployment compensation information to a public official for use in the performance of their [~~his or her~~] official duties, including the administration or enforcement of law or execution of the official responsibilities of a federal, state, or local elected official. Administration of law includes research related to the law administered by the public official. Execution of official responsibilities does not include solicitation of contributions or expenditures to or on behalf of a candidate for public or political office or a political party.

(f) The Agency may disclose confidential unemployment compensation information to a public official's agent or contractor if such disclosure is permissible under 20 CFR §603.5(e) [~~20 C.F.R. §603.5(e)~~] and only after evaluating the following factors:

(1) The potential threat to the employer's or individual's privacy posed by an entity's collection, storage, maintenance, use, and possible misuse of confidential unemployment compensation information;

(2) The costs associated with such disclosure;

(3) The agent or contractor's ability to comply with the requirements in 20 CFR §603.9 [~~20 C.F.R. §603.9~~] regarding safeguards and security of confidential unemployment compensation information;

(4) The costs of enforcement, including investigation and assessment of penalties for misuse of data;

(5) The costs to develop, monitor, and maintain systems sufficient to allow audit of the information;

(6) The personnel, travel, and equipment expenses associated with periodic monitoring and on-site audits required by 20 CFR §603.10 [~~20 C.F.R. §603.10~~]; and

(7) Whether the disclosure is for purposes of solicitation of contributions or expenditures to or on behalf of a candidate for public or political office or a political party.

(g) The Agency may disclose confidential unemployment compensation information to parties for purposes of claims adjudications, hearings, and appeals, consistent with this chapter.

(h) The Agency may disclose confidential unemployment compensation information to a federal official for purposes of UC program oversight and audits, including disclosures under 20 CFR Part 603 [~~20 C.F.R. Parts 29 and 601, as well as under C.F.R. Parts 96 and 97~~].

(i) The confidentiality requirements of this chapter do not apply to information collected exclusively for statistical purposes under a cooperative agreement with the Bureau of Labor Statistics (BLS). Further, this chapter's requirements do not restrict or impose any condition on the transfer of any other information to BLS under an agreement, or the disclosure or use of such information by BLS.

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